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THE FIRST CENTURY OF MAGNA CARTA:

Why It Persisted As a Document

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FAITH THOMPSON

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PREFACE

It has long been recognized that the true greatness of Magna Carta lies in its history after 1215. But no one has told the story in detail, the story of its first critical century when its right to survive and the grounds of its high fame were being determined. There are many histories, expositions, and commentaries of great scholarly worth, but these touch only the high points of thirteenth century charter history: the reissues in revised form, 1216-25; the confirmations of 1237, 1253, and 1297. Little attempt has been made to go back of these more striking incidents to find the real basis for them. It is the purpose of the following studies to tell the story of Magna Carta, 1215-1307, and in so doing, to explain why it persisted as a document, what was the early foundation for its long career of endurance and fame. Why was so high a value set upon its confirmation and observance; just what did the Charter mean in the everyday lives of Englishmen of the century after Runnymede?

Professor McKechnie's complete and scholarly commentary *Magna Carta* has supplied the need for an adequate exposition of the document along the lines of modern research. The historical introduction to his commentary contains a brief *historical sequel to Magna Carta,* covering the thirteenth century; in the first of the *Magna Carta Commemoration Essays, Magna Carta 1215-1915,* Professor McKechnie sketches the story of the Charter with emphasis on reasons for its greatness. In the introduction to his *Chartes des Libertés Anglaises,* M. Bémont recounts the issues and confirmations to which these documents relate, and in a more general way outlines the history of the Charter in succeeding centuries. Extensive use has been made of Professor McKechnie's *Magna Carta* for the genesis of the Charter, the period of the revisions, explanation of individual articles, and the connection of some of these with later statutes; and for the history of the Charter after 1215, of such suggestions as his *historical sequel* and M. Bémont's sketch have to offer. For the narrative and constitutional background, secondary accounts have been freely drawn upon, especially Professor Adams' *Origin of the English Constitution,* and such recent contributions to thirteenth century constitutional history as Professor Mitchell's *Studies in Taxation under John and Henry III,* and Professor Tout's *Chapters in the Administrative History of Medieval England.* The account of the Forest Charter owes much to Professor Turner's introduction to *Select Pleas of the Forest,* and M. Petit-Dutaillis' *The Forest.*

Examination of the printed sources has been both extensive and intensive. Some of the yet unpublished chronicles, close rolls, and plea rolls will undoubtedly yield more material. But enough has been done to warrant some

conclusions on the early history and perpetuation of the Great Charter. The character of the evidence and the fact that the unpublished sources are of the same type as those examined, give ground for believing that further investigation would not alter, but simply add weight to these conclusions.

The whole subject and its possibilities were suggested by Professor A. B. White of the University of Minnesota as a result of research of his own along these lines. I am indebted to Professor White for the privilege of adopting this problem, and for valuable suggestions in working it out.

FAITH THOMPSON

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INTRODUCTION

Historians and commentators on Magna Carta have outlined the framework of thirteenth century charter history, the great episodes of reissue and confirmation. They have emphasized the bearing of the Charter on general constitutional principles, its embodiment of the idea that there is a body of law which the king is bound to obey. They have not explained just how long after 1215 this particular body of law—Magna Carta—remained in force; which of its specific provisions, if any, continued to be of vital interest to Englishmen throughout the thirteenth century and beyond.

The answers to these questions have a significance beyond their own immediate interest. They should explain how the Great Charter first became so firmly established that it endured century after century, not just as so much parchment and ink, but as a living force in constitutional development. The very fame of the Charter, the fundamental and permanent position it attained, have helped to check these very pertinent historical questions. But surely no document in history has had so long or so unique a career. Other documents heralded in their own times as charters of liberty—the *Joyeuse Entrée* of Brabant, the *Ordinance of Leon,* the *General Privilege* of Aragon, and the *Magna Carta* of Hungary—early ceased to exist as living forces. In England, important documents nearly contemporary with Magna Carta, the *Constitutions of Clarendon* and the *Assize of Clarendon,* soon disappeared as distinct documents, remembered and valued in their entirety. Although important as legal bases, their provisions soon fell into disuse or were absorbed into the common law and thus perpetuated. Magna Carta, on the contrary, was never forgotten, never lost its identity as a document. It was three times revised, and at least five times confirmed,[1] during the thirteenth century. In the reign of Edward III was begun the regular practice of having the Charter confirmed by the king at the opening of parliament.[2] With the revision of 1225, the text became stereotyped. No additions or modifications were made in subsequent confirmations.[3] The "liberties," originally granted to endure forever, early acquired a recognized pre-eminence and inviolability. The text of 1225 contained a clause to the effect that any infringement or conflicting act was to be held null and void. This principle was emphasized in the famous excommunication

[1] If only the most formal and important confirmations of 1237, 1253, 1265, 1297, and 1300 be noted; but see Appendix C, *infra.*

[2] Sir Edward Coke estimates that, altogether, the Great Charter has been confirmed or promulgated by thirty-two separate acts of Parliament; he notes 15 under Edward III, 8 under Richard II, 6 under Henry IV, 1 under Henry V; quoted, Bémont, *Chartes des Libertés Anglaises,* pp. xlix-l.

[3] "One slight exception should be noted. In one point of detail a change had occurred between 1225 and 1297; the rate of relief payable from a barony had been reduced from 100 pounds to 100 marks." McKechnie, *Magna Carta,* p. 155, note 4.

pronounced against violators of the Charter in 1253. It was embodied in the *Confirmatio Cartarum* of 1297: "if any judgments be given from henceforth contrary to the points of the Charters aforesaid . . . they shall be holden for naught."

A no less remarkable feature of the Charter's long career has been the transformation which later centuries have wrought by their interpretation of this same unalterable text. One has but to compare the historian's description of the actual document of 1215, with the eulogies of statesmen and the ranting of demagogues,[4] to realize the amazing extent of the change. A medieval charter, largely feudal in its provisions, rather narrowly selfish in its purpose, become "the palladium of English liberties"; the meadows of Runnymede where the insurgent barons trampled down the hay, now "looked upon with feelings of utmost veneration, not only by the inhabitants of Great Britain, but by all English speaking democracies throughout the world."

It is a commonplace to students of English history today, of course, what worked the transformation. Much that was new was wrought into the Charter in the seventeenth century parliamentary struggle against the new despotism of the Stuarts. The old document, brought forth from the partial oblivion into which it had fallen during the Tudor despotism, was now used as a defense against impositions. It was made to combat the theory and practice of kingship by divine right: "Let us take heed what we yield unto," exclaimed Coke, "Magna Carta is such a fellow that he will have no sovereign."[5] It was made the basis of those famous seventeenth century liberty documents, the *Petition of Right* and the *Bill of Rights*, named by William Pitt with Magna Carta, "the Bible of the English Constitution." During the eighteenth and nineteenth centuries these interpretations of the Great Charter were maintained, and new ones devised. Further emphasis was placed on principles of personal and public liberty: the right to trial by jury, habeas corpus, taxation only by the consent of the governed.

[4] And one might add, historians; for comments of historians of the older school such as Creasy, Hallam, Green, and Stubbs, see McKechnie, *op. cit.* 113-14. The following, which appeared in an American newspaper editorial, is a good example of recent eulogies: "It is to Magna Charta we look for the origin of the rights to life, liberty, property, and the pursuit of happiness as these things are understood in the Anglo-Saxon world of the twentieth century. To it we trace immunity from imprisonment and deprivation of property without due process of law. It started us on the way to trial by jury; to the writ of habeas corpus; to equal and impartial justice; to taxation with the consent of the governed; to freedom of commerce. It challenged 'the divine right of kings.' It gave a 'new birth of freedom' to the rich man and the poor man. It repudiated the idea that the court should follow the person of the king, and decreed that courts of justice should be open and easily accessible to all. It laid down the tenet that punishment fit the crime, whether the punishment be imprisonment or fine. It established the supremacy of the law over the will or whim of a ruler." *Minneapolis Morning Tribune*, June 18, 1921.

[5] Quoted, Forster, *Statesmen of the Commonwealth of England*, p. 22.

This work of interpretation followed some four hundred years and more after 1215. But the statesmen who accomplished it did not simply discover an old piece of parchment, decipher it, and then deliberately set to work to transform thirteenth century feudal rights into seventeenth century parliamentary liberties. These statesmen were students of history and law. They were using a document with a long history behind it, a history written in Plea Rolls, chronicles, Rolls of Parliament, and law books, of the thirteenth, fourteenth, and fifteenth centuries. Even in those far days *Magna Carta* was a name to conjure with: however much these statesmen were misled as to the original meaning of specific provisions, the old records did make clear that the Great Charter was something bought with a price, set apart, above other laws and liberties to endure forever. Probably more of their work of interpretation had already been done for these statesmen than has hitherto been realized. Without this background, their work would have been impossible.

How and why, then, did the Charter become thus established in those early days after 1215? What circumstances helped to perpetuate it? For what virtues, real or fancied, did thirteenth century Englishmen signal it out by name and place it first among the customs and liberties of the realm, pre-eminent and inviolable? In answering these questions, use has been made of such suggestions as constitutional historians and commentators have to offer. An examination of the abundant source material available has served to add considerable evidence along new lines, and particularly in the direction of indicating the lasting practical value of specific provisions of the Charter. But the perpetuation of the great document cannot be explained by any single factor. The whole story of Magna Carta, 1215-1307, must take into account: such circumstances and features of the original grant and revisions, 1215-25, as are significant for the later history of the document; the character of the period 1225-1307; the part played by the Charter in constitutional development; the lasting practical value of the specific provisions of Magna Carta proper; what the Charter meant to the English Church; the lasting practical value of the Forest Charter, and its close connection with Magna Carta; the official treatment of the document, which gave it publicity and enhanced its importance in the eyes of contemporaries.[6]

[6] No attempt has been made in the following studies to collect all references to Magna Carta found in the sources, where no specific provision of the Charter is indicated. Such references, especially those in such a chronicle as Matthew Paris', do indicate a real interest in the document, and a desire for its observance.

KEY TO ABBREVIATIONS

A. H. R.—American Historical Review.
C. C. R.—Calendar of the Close Rolls.
C. P. R.—Calendar of the Patent Rolls.
C. R.—Close Rolls.
E. H. R.—English Historical Review.
Matt. Par.—Matthew Paris, Chronica Majora.
Matt. Par. t.—Matthew Paris, *Ibid.*, English translation.
Rot. Lit. Claus.—Rotuli Litterarum Clausarum.
Rot. Litt. Pat.—Rotuli Litterarum Patentum.
Rot. Parl.—Rotuli Parliamentorum.
Y. B.—Year Books.

THE FIRST CENTURY OF MAGNA CARTA: WHY IT PERSISTED AS A DOCUMENT

CHAPTER I

MAGNA CARTA, 1215-25

The Genesis of the Charter

Professor McKechnie states an important truth about Magna Carta when he says that its most prominent feature is "its solicitude to define the exact extent of feudal services and dues, and so to prevent these from being arbitrarily increased."[1] The genesis of the Charter, then, must be sought, first, in certain anti-feudal innovations of Henry II, and second, in the abuse of regular feudal obligations by his sons. Through the first process the feudal magnates were losing long recognized privileges, while through the second, the corresponding obligations were being increased. But this does not tell the whole story. The Great Charter was not concerned exclusively with feudal law and relationships; it contained provisions relating to the rights of the English Church,[2] the towns, and the inhabitants of the forest:[3] it recognized and regulated certain features of the king's courts, curtailing the evils, and maintaining the advantages,[4] of royal justice. The genesis of these provisions, too, is to be found in the policy of the Angevin rulers, especially John.

When Henry of Anjou undertook to increase the jurisdiction, and hence the emoluments, of his own royal courts at the expense of the private courts of his tenants, he struck at one of the most cherished of feudal privileges. The lord derived from his court, local prestige and the power to influence litigation to his own ends. He found it a valuable financial asset, in an age when amercements played so large a part in judicial procedure. Certain of Henry's innovations came to be accepted without much opposition. Such, for instance, was his claim that all heinous crimes must be pleas of the crown. Other innovations were considered desirable, among these, the petty assizes, and the king's right to hold common pleas. Some features of the so-called writ system, however, were vigorously opposed. This system had originated simply with the rule that a writ must be obtained from

[1] McKechnie, *op. cit.*, p. 52.

[2] See *infra*, ch. 5.

[3] The word *forest* is used here, and throughout, of course, in its medieval technical sense; see ch. 6, *infra*.

[4] Except for article 34, restricting use of the writ *praecipe*.

chancery before any case could be brought before a royal court, but special writs were constantly devised which cleverly diverted cases from feudal to royal courts. This practice was developed and expanded in the reigns of Henry's sons and grandson. The barons not only lost business and fees, but might find themselves subjected to judgments and amercements by the king's magistrates instead of by their peers in the feudal court of the realm.[5]

The increase of feudal obligations, especially in the reign of John, constituted a more open and flagrant encroachment upon the barons' rights. Scarcely one of the legal customary obligations due the royal overlord from his vassal, but was made oppressive. An exorbitant relief was exacted when the heir took possession of his inheritance, or the property retained in the king's hands; lands were exhausted and wasted during wardships; unfair burdens were placed on subtenants, who, through escheats, became tenants of the king; heirs were forced to marry to their disparagement, and widows were cheated of their rightful portion. These abuses affected, now one, now another, of the king's tenants. Another grievance vitally concerned them all—John's increase of the obligations incident to military service. He did not exactly convert scutage into a general tax as has sometimes been alleged.[6] He did levy the amounts at the opening, rather than at the close, of campaigns, as was customary; he sometimes took fines in addition to scutage; he took scutages on improper occasions. Although there was usually at least the pretense of a campaign, the activities which followed the scutage-taking did not always justify such a levy. In 1199, for instance, John made a truce immediately on reaching France, while in 1205 the host was dismissed as soon as summoned. He also increased the rate of scutage from the usual one and a half marks or less, to two and even three marks. To understand the real grievance of the barons at the increased rate, it must be noted that it was becoming customary for tenants to serve with reduced contingents. This reduced number of knights was regarded as the entire service owed by the holding. The scutage, computed on the basis of the old full contingent, was really much higher in proportion to the number of knights which the tenant would have actually contributed. The king's need for larger returns was no doubt very real: wages paid the knight were higher; military equipment was more elaborate and costly. This fact, however, made the policy of increased scutages only the more dangerous for the barons. Once started on this path, where would the king stop?

John's policies had alienated other important groups in the realm. The misdeeds of forest officials aggravated the evils to which inhabitants of the forest were naturally exposed. Heavy exactions exasperated the industrial

[5] McKechnie, *op. cit.*, pp. 91-92.

[6] Mitchell, *Studies in Taxation*, introd., chs. 2, 4, 10; the following statements are also based on this account.

and commercial classes in the towns. In his long quarrel with the papacy, John incurred the bitter enmity of the English Church. Unable to attack his enemy at Rome directly, the king's vengeance spent itself in lucrative confiscations of local church property; "benefit of clergy" was not respected, and in some cases, the clergy were practically outlawed.[7] Papal retaliation took the form of placing England under an interdict which lasted from March 24, 1208, to July 2, 1214. From November, 1209, to July, 1213, the king was personally under the stigma of excommunication. The temporary success of John's policy—in spite of the ban of the church, the period 1208–12 was one of unlimited royal power—was due partly to the use in the offices of both central and local government of foreign favorites. These were supported by strong bands of foreign mercenaries. The king was thus largely independent of any control by the native baronage.

But John's tyranny was too comprehensive to endure. It affected too many groups in the kingdom. There was no possibility of an alliance between king, clergy, and towns against the baronage such as earlier monarchs had found effective. When the northern insurgents finally renounced their allegiance and marched southward against their suzerain under the banner of Robert Fitz-Walter, "marshall of the army of God and holy Church," allies were already at hand among fellow barons, subtenants, clergy, and townspeople. In vain had John attempted to strengthen his forces. A charter granting freedom of election was issued to the English Church, November 21, 1214, and confirmed January 15, 1215, but the clergy remained loyal to the opposition. A new charter was granted the Londoners, May 9, 1215, insuring them the coveted privilege of electing their mayor. A week later, London opened its gates to the insurgents; other towns quickly followed this example. In the exaggerated phraseology of the chronicler, John "was deserted by almost all, so that out of his regal superabundance of followers he scarcely retained seven knights."[8]

The memorable events of the next few weeks, culminating in the parley at Runnymede, and the granting of the Great Charter, are too well known to need description here.[9] It cannot be emphasized too much, however, that the success of the insurgents was due to the united opposition of barons, clergy, and townspeople; that the document which these groups secured reflected that union. Magna Carta embodied something of the interests of all those concerned in its making. As a treaty and compromise it even reflected something of the interests of the king; inasmuch as it defined,

[7] McKechnie, *op. cit.*, p. 50; Adams, *Political History of England*, pp. 413-14.

[8] Roger of Wendover, *Flowers of History* 2:308.

[9] For a detailed account of the steps in the conference, and the drawing up and sealing of the Charter, June 15 to 19, see McKechnie, *op. cit.*, pp. 36-42.

it sanctioned, the rights of the king as suzerain; it recognized and regulated some of the best features of royal justice.

The Period of the Revisions, 1215–25

The events of the period from 1215 to 1225 may be briefly told.[10] In July of 1213, John had made his peace with Rome and become a vassal of the pope. Now he turned to this powerful suzerain for help. He had written Innocent III for support against the insurgents, May 29, 1215; now, June 19, the very day of his final acceptance of the Charter, he dispatched Richard de Marais to plead his cause at Rome. Help came promptly in the shape of a complete cassation of the Charter, removal of Stephen Langton from the see of Canterbury, and excommunication of all members of the baronial opposition. But the barons also secured help from abroad: by November, 1215, there were French troops in London; June 2, 1216, Prince Louis of France entered the city. He was accepted by the insurgents as their suzerain in John's place, he promised to observe the laws and liberties of the realm, and probably confirmed the Great Charter. The fate of the "liberties" now rested on the issue of civil war.

While the outcome was still in doubt, John died, October 19, 1216. Nine days later, on the responsibility of William Marshal and the legate, Gualo, John's son was crowned Henry III at Gloucester. William Marshal was constituted *rector regis et regni*, November 11, and the boy king was entrusted to the guardianship of his former tutor, Peter des Roches, bishop of Winchester. In all these moves the influence of the legate was apparent. On the day of his coronation Henry had done homage to Gualo as papal representative: England was still a fief of Rome, her king a vassal of the pope.

A provisional Great Charter was issued in the king's name, November 12, and authenticated with the seals of Gualo and William Marshal. This measure served both as an indication of policy and as a bid for adherents. The king, the "liberties," and ecclesiastical support were now ranged on the same side. Honorius III supported the policy of his agent. The sentence of excommunication which had been pronounced against John's opponents was still directed against all who refused to support the new king. According to Roger of Wendover, this sentence was renewed by the legate just before the Battle of Lincoln.[11] The king's cause was now in the ascendant. By September, 1217, Louis was brought to terms, and the Treaty of Lambeth

[10] See Norgate, *Minority of Henry III;* Tout, *History of England*, chs. 1, 2; McKechnie, *op. cit.*, pp. 36-47.

[11] Wendover, 2:392-93: "in order to animate the army to battle, he put on his white robes, and in company with the whole clergy there, excommunicated Louis by name, together with all his accomplices and abettors, and especially all those who were carrying on the siege of Lincoln against the king of England . . . ."

concluded. After the conditions of peace had been arranged, "the king of England with the legate and the marshal, swore on the holy gospels, that they would restore to the barons of England, and to all others in the kingdom, all their rights and inheritances, together with all the liberties formerly demanded and on account of which the dispute had arisen between John of England and the barons."[12] In fulfilment of this pledge, the Great Charter, further revised, was issued November 6, 1217. Apparently the sentence of excommunication was not repeated at this time. Louis and those of his supporters who now swore allegiance to Henry were absolved; recalcitrants were still under the ban of the sentence pronounced in 1216.

In the spring of 1218 Stephen Langton returned from exile and Gualo went back to Italy. A year later, on the death of William Marshal, the legate, Pandulf, practically assumed the duties of *rector regis et regni* for three years. With him were associated the archbishop, Peter des Roches, and Hubert de Burgh as justiciar. The years from 1217 to 1223 saw a continuation of the work of bringing order out of the chaos into which the country had fallen through misrule and civil war. There is little evidence of bad faith or violation of the Great Charter on the part of the government during this period; as barons and churchmen these officials would benefit by its observance. But their task was a hard one. Peace must be secured with Scotland, Wales, and Ireland, and means devised for the pacification of Gascony. Financial machinery must be put in operation again, and funds raised for the French indemnity as well as for current expenses. At the suggestion of Honorious III, May 17, 1220, Henry was "a second time raised to the office of king, with due solemnity according to the custom of the realm; because his first coronation, on account of the disturbed condition of his realm had been performed less solemnly than was right and fitting, and in another place than that which the usage of the kingdom required."[13] By letters dated April 13, 1223, the pope declared his ward of age.[14]

Then came the demand for the renewal of the "liberties," the demand that was to result in the final revision and issue of the Great Charter in 1225. An obvious reason was the approaching majority of the young king. It would be desirable to have the Charter, hitherto issued by the regents, now attested by the king in person. Other factors were at work, however. Under the pressure of financial necessity, the government had pressed for the return of castles, domains, and escheats into the king's hands "earlier

[12] *Ibid.*, pp. 402-3.

[13] Quoted, Norgate, *op. cit.*, p. 129.

[14] Henry would not be the full twenty-one years of age until October 1, 1228. The pope declared the king of age under certain reservations: he was to control his castles, demesne lands, and wardenships, but could not make grants in perpetuity. He actually took the government into his own hands, January, 1227. *Ibid.*, pp. 202-3, 265-66.

than strict right allowed."[15] In January of 1223, writs had been issued, instituting a sworn inquest of customs and liberties enjoyed by John at the beginning of the war, and ordering sheriffs and bailiffs to proclaim and enforce all such. Great discontent was aroused by these measures. The government was obliged to disclaim all intention of "raising up the evil customs" of John's day, and to hold back the results of the inquisition. The resumption of the castles was continued, partly by force of arms against such recalcitrants as William of Albermarle and Falkes de Bréauté, partly through the mediation of Stephen Langton; but ill feeling remained. It has been conjectured that the financial needs of the government may have led it to stretch the law in other directions also.[16]

The demand for the confirmation of the liberties was raised at an adjourned meeting of the Christmas court, January, 1224. According to Roger of Wendover, Archbishop Langton and other nobles asked the king "to confirm to them the rights and free customs to obtain which the war had been entered on against his father; and as the archbishop plainly proved, the said king could not avoid granting this, since on the departure of Louis from England, he and all the nobles of the kingdom with him swore to observe all the aforesaid liberties, and to cause them to be observed by all. William Briwere, one of the king's counsellors, on hearing this demand, made reply for the king and said, 'The liberties which you demand, since they were extorted by force, ought not by right to be observed.' The archbishop becoming angry at this reply rebuked him saying, 'William, if you loved the king you would not disturb the peace of the kingdom.' The king then seeing the archbishop excited to anger, said, 'We have sworn to observe all these liberties, and what we have sworn we are bound to abide by.' "[17]

At this time the barons had to be content with the king's promises. In December of the same year, however, the request of the government for a fifteenth of all moveables as "the means by which the English crown could regain its lost dignities and old rights,"[18] gave the barons their opportunity. The sum was granted on condition of a renewal of the liberties. The Great Charter, together with the companion Charter of the Forest, was reissued, February 11, 1225. It was granted by the king, *spontanea et bona voluntate*, and authenticated with his own seal. Formal sentence of excommuni-

[15] Adams, *Origin of the English Constitution*, pp. 281-82, note 7; some of these were grants made by the regents in 1216-17 to gain adherents for the king. The policy of resuming control was due largely to Hubert de Burgh, who incurred much enmity among the barons. Tout, *op. cit.*, pp. 14-15, 19-25.

[16] Adams, *Origin*, p. 282, note 7. A significant phrase in this connection is that used in the *Dunstaple Annals*, p. 93, in recording the reissue of the Charter, 1225: *libertates quasdam exigerunt a rege Johanne concessas et ab ipso rege postmodum confirmatas, licet nondum, balivis suis impedientibus, servatas.*

[17] Wendover, 2:443.

[18] *Ibid.*, 2:456.

cation was pronounced by Stephen Langton, the sentence to be incurred *ipso facto* by anyone who should thenceforth violate the Charters.[19]

For the later history of the Great Charter, the significant factors in this period of the minority are the policy of the papacy and the character and policy of the regents. Particularly important was the change in the attitude of the pope. Innocent III had annulled the Charter of 1215, and excommunicated those who were responsible for it. The issues of 1216 and 1217 were authenticated with the seal of the papal legate. The document was protected by sentence of excommunication directed against violators. This change of policy is not hard to explain. The Charter of 1215 had been quashed on John's representations that it contained restrictions unbefitting a king and vassal of the pope,[20] but the most objectionable restrictions were omitted from all revisions. Gualo appreciated the necessity for making concessions if adherents were to be won for Henry, and the French invaders defeated. Innocent's successor was thus ready to accept the Charter and to support the wise policy of the legate and William Marshal. Had Honorious and his agent chosen to oppose the reissues, it seems unlikely that the baronial leaders could have saved the document. The reissue of Magna Carta with papal support also won and held the English clergy as supporters and guardians of a document which promised the precious "liberty of the church."[21]

The significance of the regency lay in the fact that the regents, with their lay and clerical supporters, represented the interests of both governor and governed. As regents they could not but adopt measures to establish the young king on the throne and strengthen his hand. As great barons and ecclesiastics they were interested in maintaining the liberties formerly violated by John. It was no doubt in their own interest as well as from the desire to gain adherents, that the regents reissued the Charter in 1216 and 1217. The revised document reflected the dual position of the men who were responsible for it. The text of 1216 was temporary. That of 1217 is more finished. It deals with matters omitted in 1216 as "grave and doubtful"; it is accompanied by the separate Forest Charter, obviously the product of baronial interests.[22] "This version contains more new legislation than the earlier charters; it deals more extensively with matters which are those of government and administration and it shows some care to protect the interests of the greater barons against their tenants."[23] It re-

[19] As used here and throughout *Charters* refers to Magna Carta and the Forest Charter.

[20] See *Magna Carta Commemoration Essays*, pp. 26-35, for Professor Adams' view that Innocent was mainly actuated by his interest in John's proposed crusade.

[21] Cf. McKechnie, *op. cit.*, p. 141; Tout, *op. cit.*, p. 5.

[22] John's forest concessions had been vague and limited; Henry III and Edward I were reluctant to abide by the Charter of 1217.

[23] Adams, *Constitutional History of England*, p. 142.

tains those provisions which benefited subtenants, townspeople, and clergy; in 1217 the need for allies was still great.

The text of 1215 had contained certain provisions aimed directly at John. These articles, omitted from all revisions, dealt with disbandment of foreign mercenaries; removal from office of John's foreign favorites; restoration of hostages and charters, property and privileges; the remission of unjust fines; restrictions on methods of securing revenue, except for a revised statement on scutage. Most significant was the omission of article 61, with its machinery for checking possible future misdeeds on the part of the king; a repetition of John's tyranny was not to be feared from a child king under baronial control. The revision of 1225 contained a new clause guaranteeing all existing liberties, a clause which would mean much to the great lords, lay and ecclesiastical. This charter was authenticated by the king's own seal, and issued *spontanea et bona voluntate*: no such claim as William Briwere's, that the liberties which had been extorted by force need not be observed, could be put forward now. The grant was made more secure and binding by purchase on the part of the recipients. The reissue of 1225 thus completed the work of the minority for the Great Charter. As the product of the regency it retained the liberties desired by all the groups which had combined against John: barons, clergy, townspeople, and inhabitants of the forest. A document wrested from a reluctant monarch under threat of civil war was now issued voluntarily (in theory at least) by the ruler; a document containing constitutional restrictions in which a king would see punishment and disgrace, was transformed into a declaration of the recognized law and custom of the land, which all classes would cherish, and even kings could accept.

Magna Carta, the Definitive Text, 1225[24]

In form Magna Carta was a feudal charter of the type commonly used in an irrevocable grant of land, "and with many of the clauses appropriate to such a grant." It was granted by the king in his capacity as suzerain, to his tenants-in-chief and their heirs. Like the usual feudal charter it was authenticated by the impression of the grantors' seal.[25] It has been pointed out that the form and substance of the document are inconsistent: "its substance consists of a number of legal enactments and political and civil rights; its form is borrowed from the feudal lawyer's book of styles for

[24] It has seemed superfluous to attempt here any description of the Charter of 1215, as this document has been so fully and ably dealt with by commentators and constitutional historians. Some description of the final text of 1225, however, seems desirable. Commentators on John's Charter have indicated wherein this final issue differed from earlier ones, but have not treated it as a whole.

[25] McKechnie, *op. cit.*, 107.

The phrases which correspond to those which would be used in a land charter are to be found in the preamble and articles 1 and 63, of course: the intitulation and address, and particularly the clause, *in primis concessisse Deo et hac presenti carta nostra confirmasse pro nobis et heredibus*

conferring a title to landed estate."[26] But it was a common form, and the most binding then in use.

The final revision of 1225,[27] the definitive text of the Great Charter, resembled that of 1215 in its legal form; in the predominance of feudal liberties among its provisions; in its injunction that barons, lay and ecclesiastical, observe toward their feudal dependents the rights granted them by the king; in granting the liberties in perpetuity. Although the text of the revisions gives evidence of more careful consideration and greater precision of language, lack of any logical grouping or arrangement is as marked as in the original grant.

The text of 1225 differed from all previous issues in the following particulars. It contained the clause *spontanea et bona voluntate nostra, dedimus et concessimus.* It recognized the grant of the *fifteenth* paid for the reissue of the liberties.[28] It reserved to archbishops, bishops, abbots, priors, templars, hospitallers, earls, barons, and all other persons, ecclesiastical as well as secular, the liberties and free customs which they had formerly enjoyed. The binding force of the grant in perpetuity was now strengthened by the declaration that any policy or enactment contrary to the terms of the Charter was to be held invalid.[29] Here in the text of the document itself was suggested the conception of the Great Charter as a sort of fundamental law, a conception to be strengthened in succeeding years and to be emphasized in the confirmations of 1253 and 1297.

nostris in perpetuum; and *Concessimus eciam omnibus liberis hominibus regni nostri pro nobis et heredibus nostris in perpetuum, . . . habendas et tenendas eis et heredibus suis, de nobis et heredibus nostris . . . .*

Professor Adams has an interesting note on the diplomatic form of the Charter: "It opens with the intitulation and address of a formal charter, and proceeds with the *per consilium* clause of a legislative act, though the description is hardly that usual to an ordinary great council. The effect of the *per consilium* phrase, as far as language goes, extends through the grant to the church but no further. Then follows a formal granting clause, rather in the form of a release than of a new conveyance. (Pollock and Maitland 2:90.) It almost looks as if this form of words were chosen because the possession, the seisin, by the barons, of rights to which they laid claim was now recognized, though it had been attacked by the king, but it would be impossible to assert that this was really intended. This grant covers all the charter which follows and is repeated in slightly different words in clause 63. There is then added an unusual clause about an oath sworn by both the barons and the king, more suitable to a treaty than to a charter." *Origin of the English Constitution,* p. 212, note 6.

[26] McKechnie, *op. cit.,* p. 107; for various views of the legal and political status of the Charter, see McKechnie's comment, and the discussion which follows, pp. 104-9; cf. Pollock and Maitland, *History of English Law* 1:171; and Cannon, *The Character and Antecedents of the Charter of Liberties of Henry I, A. H. R.* 15:45.

[27] The revision of 1225 differs but slightly from that of 1217. For comparison of changes in successive issues, see McKechnie, *op. cit.,* pp. 139-55; *Select Charters,* pp. 335-39, 340-44, 349-51; Bémont, *op. cit.,* pp. xxvi-xxx; Norgate, *op. cit.,* pp. 10-15, 78-81.

[28] *Pro hac autem concessione et donatione libertatum istarum . . omnes de regno nostro dederunt nobis quintam decimam partem omnium mobilium suorum.*

[29] *Concessimus etiam eisdem pro nobis et heredibus nostris quod nec nos nec heredes nostri aliquid perquiremus per quod libertates in hac carta contenta infringantur vel infirmentur; et si de aliquo aliquid contra hoc perquisitum fuerit, nichil valeat et pro nullo habeatur.*

The text of 1225 has been divided into thirty-seven articles.[30] Of these, sixteen are identical with provisions of John's Charter;[31] nine contain slight changes;[32] seven have additions or amplifications;[33] two make new provision for matters dealt with in the earlier document;[34] three have no counterpart in the original grant.[35] In all, thirty-seven chapters of John's Charter are embodied in some form in the final text.

Articles concerned with strictly feudal matters regulate: rates of relief (article 2); wardship (3, 4, 5); marriage of widows and heirs (6, 7, 8); the amount of service due from a knight's fee (10); castle-ward (20); use of the writ *praecipe* to encroach on baronial jurisdiction (24); obligations of fee farm, socage, and burgage tenure (27); weakening of fiefs by alienation of land (32, 36); debts of deceased tenants (18); escheats (31); the right of barons to have the custody of abbeys they have founded (33).

Article 29 comprises the famous articles 39 and 40 of John's Charter. Other legal provisions treat of debtors (8); lands of felons (22); amercements (14); the use of writs of "inquisition of life and limb" (26); imprisonment on the testimony of a woman (34); judicial powers of bailiffs (28); the sheriff's tourn and view of frankpledge (35); petty assizes (12, 13); and common pleas (11, 17).

The English Church is to "be free, and shall have all her rights entire and her liberties inviolate" (1). The interests of the church are also affected by parts of articles 5 and 14, and by article 36.

Miscellaneous provisions concern bridge repair obligation (15); putting river banks in "defense" (16); abuses of purveyance (19, 21); removal of fish weirs (23); uniform weights and measures (25); and protection for merchants (30). Article 9 guarantees the liberties of London, the Cinque Ports, and other towns.

For the taking of aids other than the three regular feudal aids no provision is made. The vexed question of scutage is settled as in 1217, simply by providing that it be taken as in the time of Henry II. Like John's Charter this text affords no specific regulation of overseas service, but it

[30] The arrangement of 37 articles in the text of 1225 as contrasted with 63 in that of 1215, does not mean that the former was a much shorter document. Provisions listed as separate articles in the text of 1215 are grouped in that of 1225.

[31] Articles 2, 4, 6, 8, 10, 11, 13, 17, 18, 22, 23, 24, 25, 26, 27, and 34.

[32] Articles 1, 8, 9, 14, 20, 28, 29, 30, 33.

[33] Articles 3, 5, 7, 12, 19, 21, 31.

[34] Articles 13 and 16.

[35] Article 32, providing against weakening a fief by alienation of land; article 36, restricting alienation of land to religious houses; article 35, regulating the sheriff's tourn, view of frankpledge, etc.

may have been covered by article 10.[36] No provision is made for the enforcement of the "liberties."[37]

Magna Carta and Tradition

Magna Carta has been characterized as a "great generic or comprehensive document, gathering into itself in result almost all legal and institutional history since the Conquest . . . ."[38] Again it has been said that the Charter cannot be traced back to any single ancestry, but "like the English Constitution, it is of mixed origin, deriving elements from ancestors of more races than one."[39] On the basis of historical origin, Professor McKechnie suggests a fourfold classification of the declaratory law of the Charter: preconquest law, feudal law introduced after 1066, innovations of Henry II, and some advances even over the work of the latter.[40] Professor McIlwain finds the explanation of the conception of the Charter as fundamental law, in the fact that most of its provisions were simply statements of the common law.[41]

[36] This article, might be construed as protection against overseas service where none was due, or against the increasing of such service where it was due. Certain holdings evidently owed a specified amount of such service: "and doing therefor foreign service as much as pertains to so much land in the same vill"; "rendering yearly 40 marks of silver, and doing foreign service as much as pertains to that tenement." *Three Early Assize Rolls,* pp. 403, 425-26, respectively.

[37] The following table indicates how the "liberties" of the 1225 text were distributed according to classes in the community. Attention is called especially to Group 4, including articles on procedure in the king's courts. Commentators and historians generally ignore the importance of this group to the nobles and the large and growing class of free men.

Group	Class	Articles
1	Earls and barons	Articles 2, 3, 4, 5, 6, 7, 10, 18, 24, 29, 32, 37, and special clauses in articles 14 and 21; all articles listed in Group 4 below.
2	Knights	Articles listed in Group 1, except special clauses in 14 and 21; all articles in Group 4; article 20.
3	Freemen	Articles using the phrase *liber homo,* i.e. 14, 24, 29; articles in Group 4.
4	All persons above the rank of villein, as specified in article 1, granting the liberties	Articles 8, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22, 23, 26, 27, 28, 29, 33, 34, 35, 36, 37 (second clause).
5	Townspeople and merchants	Articles 9, 14, 23, 25, 30; if freemen, such of the articles in Group 4 as might apply to interests of this class.
6	Villeins	Article 14.
7	Clergy	Articles 1, 14, 21, 36, 37; and for such as held lay fiefs, Group 1.

[38] Adams, *Origin,* pp. 207-8.

[39] McKechnie, *op. cit.,* p. 95.

[40] *Ibid.,* 112.

[41] He notes particularly in this connection those clauses of the *Confirmatio* of 1297, which direct officials to administer "the Great Charter of Liberties as Common Law and the charter of the Forest according to the Assize of the Forest," and which provide "that if any judgments be given from henceforth, contrary to the points of the charters aforesaid, ... they shall be holden for naught." He then proceeds to show that common law is fundamental law, common to all, permanent; Magna Carta was a statute characterized by all the formalities of such an enactment, and a statute was an affirmation of law already existing—common law. As an affirmation of common law, the enactment was "really incorporated into this law, along with it, 'perpetuelment a durer,' to be affirmed along with it in all subsequent Parliaments." *Commemoration Essays,* pp. 122-79.

To contemporaries, Magna Carta was essentially an embodiment of existing laws and customs, a perpetuation of the traditions of the past. Only one account states that the Charter contained anything new.[42] The *Annals of Waverly* mention the laws of Edward,[43] and the author of the *Histoire des ducs de Normandie,* the charter of Henry I,[44] as antecedents of these liberties of 1215. Other contemporary accounts are less specific, but give some suggestion of the continuity of Magna Carta with the past.[45] It is Roger of Wendover who gives us the graphic account of the finding of the Charter of Henry I, and its use as a basis for wresting from John a greater confirmation of liberties. According to this story, at a gathering of clergy and barons at St. Paul's, August 25, 1213, the archbishop, Stephen Langton, "called some of the nobles aside to him, and conversed privately with them to the following effect: 'Did you hear,' said he, 'how when I absolved the king at Winchester, I made him swear that he would do away with unjust laws, and would recall good laws, such as those of king Edward, and cause them to be observed by all in the kingdom; a certain charter of Henry the first king of England has just now been found, by which you may, if you wish it, recall your long-lost rights and your former condition.' And placing a paper in the midst of them, he ordered it to be read aloud for all to hear, ... When this paper had been read and its purport understood by the barons who heard it, they were much pleased with it, and all of them, in the archbishop's presence, swore that when they saw a fit opportunity, they would stand up for their rights, if necessary would die for them."[46] Next year when the barons assembled at St. Edmundsbury to decide on concerted action against the king, the charter was produced, and adopted as a program.[47] It was natural that this document should have appealed to the insurgents. Eleven of its thirteen articles dealt with feudal law, many of them with the very abuses practised by John. It promised

[42] *Omnes libertates et liberas consuetudines quas habuerunt tempore praedecessorum suorum cum augmentatione aliarum libertatum in praedicta carta contentarum; Liber de Antiquis Legibus, Select Charters,* p. 320.

[43] *Hoc anno magna orta est discordia inter regem Angliae et barones; his exigentibus ab eo leges Sancti Edwardi, et aliorum subsequentium regum libertates et liberas consuetudines. Ann. Waverly,* p. 282.

[44] *Il demanderoient al roi que il lor tenist les chartres que li rois Henris qui fu ayons son pere* (sic) *avoit données a lor ancissours et que li rois Estievenes lor avoit confremées. Histoire des ducs de Normandie,* pp. 145-46.

[45] *Henricus rex Anglorum concessit et dedit . . . libertates et liberas consuetudines sicut erant in diebus antiquis. Ann. Waverly,* p. 300.

Corroborans omnes libertates Anglicanas temporibus proavorum suorum liberius et quietius usitatas . . . Ibid., pp. 310-11.

Concessit et confirmavit omnes antiquas libertates et liberas consuetudines regni. Ann. Worcester, p. 417.

Cf. Ann. Dunstaple, p. 43; *Ann. Tewksbury,* p. 68; *et al.*

[46] Wendover, 2:276, 278.

[47] *Ibid.,* p. 303.

that the church should be "free." It contained the vague but comprehensive and well-sounding promise, "I restore to you the law of king Edward, with the amendments which my father, by the advice of his barons, made in it."[48] When royal messengers came to ask what were the laws and liberties which the barons demanded, the insurgents delivered to them "a paper, containing in great measure the laws and ancient customs of the kingdom."[49]

It is true that this idea of linking up the Great Charter with the past is not embodied in the document itself. No reference to the laws of Edward or the Charter of Henry I appears in either the Articles of the Barons or any text of Magna Carta. Furthermore it has been argued recently that the Charter of Henry I was primarily feudal and Anglo-Norman in character; that it really has little connection with either the laws of Edward or the old Anglo-Saxon coronation oath.[50] Yet connection with the past is expressed in such incidental references as the general confirmation of existing liberties, and the taking of scutage as in the time of Henry II. The form and contents of the Great Charter are such, that even without Roger of Wendover's story, we should be inclined to suspect that the barons had a copy of the Charter of Henry I in their possession. In popular conception the Great Charter was linked with the past, and rightly so.

As years went by, of course, Magna Carta and all that it contained became literally *old* law and custom, and this fact is reflected in the terminology of the latter half of the thirteenth century.[51] In the reign of Henry III the Charter was sometimes designated as the Charter of John, its first grantor. In the reign of Edward I it was more apt to be connected with Henry III, in whose reign the revisions and some confirmations were made.[52] It was not necessary now to give the Charter a more ancient lineage, for by this time it had superseded any earlier document or body of laws in the popular estimation. "The demand for the confirmation of Magna Carta took the place of the old battle-cry of a return to the laws of the good King Edward, and the halo as of a golden age, that surrounded the 'leges Edwardi' was transferred to their supposed new embodiment in John's Charter of Liberties."[53]

The Name and Its Significance

The conception of the Charter as a collection of various unconnected "liberties" of the realm persisted for some time. It is not until after the final revision of 1225, that these are named in contemporary literature as

[48] *Select Charters*, pp. 117-19; McKechnie, *op. cit.*, pp. 481-83.

[49] Wendover, 2:306.

[50] Cannon, *op. cit.*, *A. H. R.* 15:37-46.

[51] *Antiquas cartas communium libertatum, Royal Letters of Henry III.* 2:283; *veterem chartam*, Rishanger, *Ann. Regis Edwardi Primi*, p. 460, *Ann. Angliae et Scotiae*, pp. 379, 404, 495; *et al.*

[52] *Rot. Parl.* 1:240; Rishanger, *Chronicle*, p. 11; *et al.*

[53] McKechnie, *Commemoration Essays*, p. 17.

one document or *charter* of liberties. Accounts of the reissues of 1216, 1217, and 1225 commonly use the terms *libertates, leges,* or *consuetudines*.[54] It has been demonstrated that the name *magna carta* was not applied to the document originally as a result of conscious appreciation of its greatness or importance. It was first used in 1218 by a royal scribe, under the necessity of distinguishing the Great Charter proper from the new Charter of the Forest, a document "smaller in quality as well as quantity."[55] The term was used in official documents and chronicles in connection with the Forest Charter,[56] and finally replaced the more common term, *carta de libertatibus*, irrespective of any idea of contrast.[57] The word "liberties" persisted for some time after 1218. As the Forest Charter was also a charter of "liberties," a further distinction was necessary. This appears after the issue of 1225. Roger of Wendover records the sending to those counties in which there were forest districts two charters, *una scilicet de libertatibus communibus et altera de libertatibus forestae*.[58] Thus, again as a means of contrast, was originated the significant phrase frequently used in the later years of Henry III's reign, *magna carta communium libertatum Angliae*, or simply *carta communium libertatum*.[59] From about 1253 on through the reign of Edward I, use of the term *magna carta* becomes increasingly common in both chronicles and official documents.[60] Yet the adjective *magna* does not seem to have become an inseparable part of the name by the end of the thirteenth century, and the modifying phrase *de libertatibus Angliae* appears even after this date.[61] These variations must have added to the connotation of the name in its popular appeal, during the years in which the document was

[54] *Ann. Waverly*, p. 283; Matthew Paris, *Chronica Majora*, 3:31, 76; *Ann. Dunstaple*, p. 93; *Ann. Worcester*, p. 417; *Ann. Tewksbury*, p. 68. Similar uses are found later: 1229, *Royal Letters* 1:359; 1237, *Close Rolls*, 1234-37, pp. 544-46, 556, *et al.* There are exceptions among the chroniclers in the early period: Thomas Wykes, *Chronicon*, p. 59; *Ann. Osney*, p. 60.

In royal orders, reference was simply to *carta nostra*, or *carta nostra de libertatibus*. *Royal Letters* 1:450-52; *Rot. Litt. Pat.*, p. 145; *C. R.*, 1234-37; p. 541, *et al.*

[55] White, *The Name Magna Carta, E. H. R.* 30:472-75, 32:554-55. The letter as first written had contained the phrase *secundum quod continetur in maiori carta*. This was revised by the scribe to read *quod in fine magne carte appositum est*. "The contrast was forced upon him, and perhaps when the scribe wrote that comparative adjective *maiori* the world famous term had its birth." Professor White suggests that there may have been several independent sources of the name involving more than one root idea.

[56] *Ann. Dunstaple*, pp. 189, 195; Wykes, *Chron.*, p. 66; Matt. Par. 6:250; *Statutes of the Realm*, 1:28.

[57] 1234, *Royal Letters* 2:395; 1242, Matt. Par. 4:186; 1253, *ibid.*, 5:359; 1254, *Cal. Pat. Rolls*, 1247-58, 280-81; 1255, Matt. Par., *op. cit.*, 5:520; 1256, *ibid.*, 540; 1257, *ibid.*, 623; 1258, *ibid.*, 689.

[58] Matt. Par. 3:92.

[59] *Ann. Burton*, pp. 318-19, 322; *Royal Letters* 2:283; Matt. Par. 5:376, *et al.*

[60] *C. P. R.* 1272-81, p. 324; *Rot. Parl.* 1:55; *Placitorum Abbreviatio*, p. 223; *Flores Hist.* 3:102; Walter of Hemingburgh *Chronicon* 2:127, and many others.

[61] *Liber Custumarum* 1:383, (14 Ed. II); *Flores Hist.* 3:109; Pierre de Langtoft *Chronicle*, pp. 330, 332; *et al.* An odd variation in referring to the Charter is the following: *statutum de Ronemede, Placitorum Abbreviatio*, p. 286; *carte de Runemede, Bracton's Note Book* 2:402.

acquiring the distinction and stability finally to be epitomized in the simple *magna carta*. It has been suggested that "in the subtle psychology of human events the early possession of this simple but distinctive title perhaps helped to start the *carta libertatum* upon its unique career among the world's documents."[62]

When we reach the year 1225, certain elements already suggest themselves as factors in the perpetuation of the Great Charter. It had a sort of legal permanence—granted to endure forever. The very text of the final revision embodied the principle so much emphasized later, that the Charter contained fundamental law which must not be changed. The numbers of copies issued made it likely that the document would have physical endurance—that it would survive as so much parchment and ink. As an embodiment of custom and tradition—the "good laws" of King Edward and the Charter of Henry I—the Charter was an object of veneration from the beginning. The very names by which it was designated—"charter of the common liberties of England," "great charter of liberties," *magna carta* —marked it as something outstanding, eminently to be desired.

The "liberties" had been won first under unusual and impressive circumstances, and then saved only by two years of civil war. Reissues kept the document before public attention. These reissues received the invaluable support of the papacy. Revision, in the hands of the regents, lay and ecclesiastical, made the Charter a more practical working document, and one which even a king might voluntarily accept.

All these factors no doubt played a part, and an important one, in the perpetuation of the Great Charter. Still it is possible to imagine, after 1225, an England ruled by a weak timid king, punctilious to observe all "liberties"; or an England ruled by a dominating king, wise and powerful enough to override or change old laws and customs. In the first case appeal to the parchment authority of Magna Carta would have been needless, in the second futile, and the great document would have fallen into obscurity. Was it nevertheless strongly enough established to have been revived in later generations or even centuries? Possibly; it is useless to speculate, for such was not to be the course of thirteenth century history. The modern Englishman should perhaps thank John's successors for a régime that sped the Great Charter still further on its way to fame and perpetuity.

[62] White, *The Name Magna Carta, E. H. R.* 30:472.

CHAPTER II

CHARACTER OF THE PERIOD 1225-1307

Magna Carta and the Forest Charter were formally confirmed at least five times in the reign of Henry III, and twice in that of Edward I.[1] In addition there were informal confirmations, and promises of observance on the part of the king. These confirmations were always secured through the initiative of barons or clergy, and preceded by vigorous complaints directed against the policies of the king. What were these policies; did they actually violate the provisions of the Charters; did they offend all groups in the community so that the great combination of 1215 might be reformed against John's successors, with the Great Charter as its rallying cry? A brief sketch will serve to show, that while Henry III and Edward I did not revive the evils of John's reign in exactly the same form: (1) they engaged in expensive ventures which created need for increased income, and tried to obtain revenue by devices quite as aggravating as John's scutages; (2) to secure this revenue and carry out their designs they governed by personal non-baronial agencies, thus violating the spirit and intent of the Charter; (3) arbitrary exactions and personal rule led to gross abuses in local government—to constant violations of the various specific "liberties" embodied in the Charter.

At the time of his accession to the throne, the little Henry III, an attractive child, mature beyond his nine years, was enthusiastically welcomed by his subjects, "sole hope of the torn kingdom, a star as it were, lit by God."[2] Yet as years went by, this early promise was belied, until the king became "as it were, the stalk of a reed—on which those who lean in confidence are wounded by the fragments of it."[3] Little consolation to the English that their ruler was a man of personal charm, high character, and saintly reputation; that he was well educated, with a cosmopolitan interest in the artistic and literary movements on the continent; that his delight was to make his own and his queen's poor relations rich and happy; his favorite hobby the building of Westminster Abbey; that he was the most dutiful princely son "holy Roman mother church" ever had. These virtues were as costly as John's vices, and in an age of frequent wars and foreign entanglements, the man who sat upon the throne was neither warrior nor diplomat. Whatever Henry undertook was doomed to failure. Even such legitimate undertakings as the wars against the Welsh, and those to preserve

[1] For complete list of confirmations, see Appendix C.

[2] Wright, *Political Songs*, p. 22.

[3] Matt. Par. t., 1:299.

the English heritage on the continent, miscarried through inaction or poor management. It was "a great scandal on his crown that those worthless robbers the Welsh, roved with impunity through their lands . . . . devastating all places with fire and leaving nothing uninjured,"[4] and the barons reproached their king with having "never repelled or even frightened one of the enemies of the kingdom, even the least of them," nor having increased his territories, "but rather lessened them and placed them under foreign yoke."[5]

Edward I was a very different character from his father. Contemporary chroniclers and modern historians alike[6] are lavish in praise of his kingly qualities—his ability as warrior, statesman, and diplomat. He had, to his credit abroad, the crusade of 1272, the definitive conquest and anglicizing of Wales, the treaties of 1279 and 1303 with France, more effective control of Gascony, the temporary overlordship of Scotland; and at home, those pieces of codification and legislation which have won for him the title of the "English Justinian." Nevertheless, his government, while more orderly and efficient than his father's, was the same in principle—personal non-baronial rule; his ventures too extensive for the revenue of a thirteenth century feudal king. Extortion and oppression resulted.

Arbitrary Exactions

Both Henry III and Edward I tried with considerable success to divert revenue from the exchequer to the household treasury. Even so, the royal income was inadequate. Already in the twelfth century regular revenues[7] were insufficient, a condition which became more acute in the thirteenth. Government administration was careless, and the machinery for collecting revenue inefficient. Wars were undertaken on a larger scale, with more elaborate and costly equipment. Wages of the knight increased, while scutage rates did not.[8] Under such conditions could the king "live of his own," as the barons demanded? Rather he must increase old sources of revenue and invent new ones if possible. Denied the device of heavy scutages,[9] Henry III and his son made use of a new and more remunerative

[4] Wendover, 2:552-53.

[5] Matt. Par. t., 1:44.

[6] Langtoft, *Chronicle,* pp. 381-83; Nicholas Trevet, *Ann.* pp. 281-82; Tout, *Edward I;* Jenks, *Edward I.*

[7] Ordinary revenue consisting of the county ferm, amercements, the *firma burgi,* income from feudal incidents, and fines for special privileges; the extraordinary revenues, such as feudal aids, scutage, tallage, and *dona* or *auxilia* from Jews, moneyers, prelates, and religious houses. Mitchell, *op. cit.,* pp. 1-2. In the customs of 1275 and 1303, Edward had a valuable source of revenue not possessed by his father except for the new aid of 1266.

[8] *Ibid.,* pp. 309-10; Morris, *Welsh Wars of Edward I,* ch. 2.

[9] Both kings accepted the restrictions of the Great Charter, and usually consulted their tenants as to the rate and propriety of the levy. For scutage under Henry III, see Mitchell, *op. cit.* chs. 5-8; under Edward I, Morris, *op. cit.,* pp. 108-9.

expedient, the *extraordinary* or *gracious* aid.[10] These aids might take the form of a carucage, a levy on knights' fees, or a tax on personal property. It was this last type which was most commonly used. Although feudal in origin, in practice the gracious aid was thus assuming a distinctly non-feudal character. In fact, it was no longer an *aid,* but a *tax;* it was based, not on real property, but on moveables; it was payable directly to the king; the machinery of assessment and collection was not feudal, but national; it was uniform and proportional, extended not only to tenants-in-chief, but to all classes. It hit, not a class of men, but of property. The theory of individual consent, that is, that the grant was based on a personal agreement between king and tenant, recurred more or less in practice throughout the reign of Henry III, but the tendency of the period was to transform individual into corporate consent or refusal.[11]

Although articles 12 and 14 of John's Charter, providing for consent in levying extraordinary aids, were omitted from all revisions, Henry III always asked such an aid legally, by the "common counsel" of his tenants. With perhaps one exception, Edward seems to have followed the same procedure. But the barons began to fear, and with reason, that through repeated consent to royal demands, the voluntary gracious aid would become obligatory, and the grant by "common counsel and consent," a mere formality. From 1225 to 1237 Henry was successful in obtaining gracious aids. From 1237 to 1269, his appeals were stoutly resisted by the barons, although on one occasion they substituted one of the regular feudal aids for the broader grant asked by the king.[12] Edward made increasing use of the gracious aid.[13] In 1288-89 an aid was refused until the king should return from the continent, but little real opposition was voiced until 1297. The aid imposed in February of this year was refused on the alleged grounds that proper consent had not been secured.[14] Frequency of aids during these years might well make the barons apprehensive of the king's policy.

Other money-getting devices, more petty, but none the less annoying, aroused great discontent. Matthew Paris complains particularly of Henry's

[10] The gracious aid appears in the reign of Henry II "granted by the tenants to their lords for expenses on trips abroad on the king's service, for war, to pay the lord's debts, and simply as *auxilium*, made *gratis, bona voluntate.*" The levies made by John and his successors simply applied this custom to the kingdom as a whole with the king as chief lord; Mitchell, *op. cit.*, pp. 346-48. The following account is based on Mitchell.

Morris estimates that "the tax of a fifteenth brought in nearly ten times more than the whole nominal feudal service of England would have yielded if every tenant paid up 40s. a fee without doing any service at all in war." *Op. cit.*, p. 43.

[11] Mitchell, *op. cit.*, pp. 386-88.

[12] For description of Henry's aids, *ibid.*, chs. 5-8.

[13] Such aids were taken in 1275, 1283, 1290, 1292, 1294, 1295, 1296, 1297, 1301, 1306, and 1307.

[14] One chronicler states that it was granted mostly "by people standing about in the hall"; *Flores Hist.* 3:102-3. Opposition was due to a combination of causes: the aids in previous years, the maltolte on wool, the unpopularity of the campaign on the continent.

extortion under the guise of administering justice, and of abuses of purveyance.[15] These practices were revived in the period of Edward's French and Scottish wars, together with the *maltolte,* and arbitrary seizure of the crusading tenth and church property.

If the barons saw in the limitation of scutage, relief from arbitrary exactions, they were sorely disappointed. Did the Charter offer any remedy for these new evils?

Personal Government

Professor Tout's recent *Chapters in the Administrative History of Mediaeval England* has thrown much light upon the royal-baronial struggle of the thirteenth century. It makes clear the character of the administrative offices which both king and barons sought to control, the methods adopted by the two parties to gain their ends, and the evils which might result for the community were either party completely successful. Of the three important administrative organs of government, exchequer, chancery, and wardrobe, in the reign of Henry III, only the first had completely separated from the king's household or "gone out of court." The chancery was fast becoming national and non-curialist in character: it practically "went out of court" in the reign of Edward I.[16] There remained the main executive department of the king's household, the wardrobe, "the chief administrative, directive, financial, secretarial and sealing department."[17] Thus while certain institutions had acquired a separate existence for purposes of national government, the old king's council which had once exercised their functions, still retained the same powers as applied to the king's household. The king, thus possessed in the wardrobe or household government, two great advantages. First he could use it to govern his household, and by usurping the functions of the new national departments, govern the realm, independent of baronial control. Second, because these new departments were curialist in origin and only gradually assumed a separate existence, he could prolong their connection with the household, or resume some degree of control over them.

Henry III used the wardrobe in both of these ways with considerable success: he increased the activities of the wardrobe at the expense of the national departments; he placed his own men in exchequer and chancery, and even conferred national and household offices on one individual. Household officials were chief among the king's counsellors and their influence made itself felt in all matters of royal policy.[18] The aim of the barons

[15] Matt. Par. t., 1:280, 401; 2:255-56; 3:20-21, 90; *et al.*

[16] Tout, *Chapters in Administrative History* 1, ch. 4, and 2, ch. 7.

[17] *Ibid.*, 1:19.

[18] *Ibid.*, 1, ch. 6.

was, conversely, to keep the great national departments of exchequer and chancery in their own hands, to place some of their number in the king's household, and to insist on their position as the true and only counsellors of their overlord.

Henry III, usually accused of lacking any policy, in one sense had a very definite and persistent policy: to govern personally through the household, independent of baronial control, free to pursue whatever aims piety or ambition dictated. For twenty-four years (1234-58) he did so rule, in spite of the barons. Then their opposition was only temporarily successful, and that by means of civil war.

The government of Edward I differed from that of his father in detail rather than in principle. It was more orderly and efficient, it was staffed largely by Englishmen instead of foreigners, but it was personal household government, nevertheless. Edward's most famous ministers were promoted wardrobe clerks, not the great political ministers of high feudal rank desired by the barons. During his reign the wardrobe dominated chancery and exchequer, and the use of the privy seal was increased. Such income as loans, Gascon and Irish revenues, and the *new customs* were received at the wardrobe. During the constant wars of Edward's last years, the wardrobe, as the war treasury, tremendously increased its activities. Making allowances for the exigencies of war, Professor Tout finds it "difficult, nevertheless, to avoid seeing in the exceptional activity of the wardrobe of the old king's last years some element of policy. It looks as if there was a deliberate strengthening of the administration which depended upon the household, as the king's best defence against the persistent efforts of the magnates in parliament to assert control over the more public machinery of the state."[19]

This whole policy of personal government was contrary to the spirit of Magna Carta. It was to prevent just such arbitrary rule that article 61 was framed in 1215.

Local Misgovernment

Personal rule made it possible to put the king's tools into offices of local as well as central government. Henry III found plenty of material at hand in the Provencal and Savoyard relatives of Queen Eleanor, and in his own Poitevin kinsfolk and their followers. The native English were taxed to fill the royal treasury, while money, lands, and other rich gifts were lavished upon these favorites, until England was become "as it were a vineyard without a wall, in which all who pass along the road gather the grapes."[20]

[19] Tout, *Chapters in Administrative History*, 2:96, see 2, ch. 7, for detailed account of Edward's policy.

[20] Matt. Par. t., 1:122. Numerous, scathing, and sometimes amusing are Matthew's tirades against the "aliens"; see 1:318, 320, 405; 2:417, 437, 482-83; 3:42, 52, 296; *et al.* cf. Rishanger, *Chronicle*, pp. 3-4.

Unfortunately this was not the chief grievance against the aliens. As sheriffs, bailiffs, castellans, mesne lords, they not only carried out the king's policies, but through very ignorance or spite, violated the "law and custom of the land."[21] The "alien invasion" was not repeated in the reign of Edward I; abuses in local government were less flagrant. Misdemeanors of the judges during Edward's absence on the continent, however, were notorious. The military necessities of the king's last years revived the oppressions of sheriffs and bailiffs. There was at this time no chronicler competent to recount their excesses with quite the wealth of detail and vigor of a Matthew Paris, but some complaints are voiced by contemporary writers.[22]

This type of local magnate or official violated those provisions of Magna Carta regulating purveyance and the administration of justice, and there was likelihood of the violation of all the various class "liberties" embodied in that document. Articles of John's Charter providing for the removal of foreign favorites and mercenaries, and the appointment as officials, of "only such as know the law of the realm and mean to observe it well," were omitted from all revisions. But much of the "law of the realm" which such men ought to have observed, was still prescribed there.

Like John, Henry III and Edward I offended the merchant and industrial class, especially the Londoners; encroached upon the liberties of the English Church; and maintained an oppressive forest jurisdiction.[23] Henry subjected London to heavy tallages, exacted fines for slight offenses, and sometimes for the right to use the very liberties already granted by charter; "gifts" were demanded, and "presents turned into precedents." City officials were temporarily suspended or replaced by royal nominees, notably in 1248, 1258, and for six years after the royalist victory of 1265-66. Although its political liberties were restored early in Edward's reign, London was again "taken into the king's hands," in 1285. From that date until 1298 a royal warden replaced the elective mayor. Article 9 of Magna Carta assured to London "all its ancient liberties and free customs as well by land as by water." Those privileges specifically recognized in earlier charters comprised the right to elect a mayor and to choose for London and

[21] If anyone who had suffered an injury went to the seneschal of William of Valence to ask justice, relates Matthew Paris, he received some such answer as the following: "If I do you an injury, who will do you justice? The king's wish is in accordance with that of my master, but not the reverse"; 3:332.

"If anyone who had been grievously injured laid his complaint before the Poitevins, whose heads had been turned by their vast riches and possessions, and asked for justice to be done him according to the law of the land, they replied, 'We care nothing for the law of the land; what are the ordinances and customs to us?'" *Ibid.*, 2:510-11.

[22] *Ann. Dunstaple*, 263; Walter of Hemingburgh, *Chron.* 2:123-24; Langtoft, *Chronicle*, 329-31; *Articuli super cartas*, Bémont, *op. cit.*, pp. 99-108; *Flores Hist.* 3:101.

[23] For grievances of clergy and the forest inhabitants see chapters 5 and 6, respectively.

Middlesex the sheriffs who collected the *firma burgi;* the exemption of citizens from being summoned to courts outside the city; control of the Thames and Medway.[24] The Londoners no doubt interpreted article 9 to cover such chartered rights, and matters of custom and precedent as well.

Arbitrary exactions, personal rule, violation of the "law and custom of the land"—clergy, barons, knights, and freemen, merchants and artisans, even villeins,—all classes were affected by one or more of these abuses. Many of them were natural to the medieval organization of society; others were inevitable accompaniments of the growth of national states; but they were aggravated by the strengths and weaknesses of individual kings. To contemporary society these evils seemed neither inevitable nor irremediable. For some of them the Great Charter offered a specific remedy, for others none except in spirit. What was the contemporary view of the great document? Was it valued as a constitutional check: a remedy for arbitrary exactions, a theory of machinery for the control of the feudal monarchy which would make an end of personal rule and all its attendant evils? Was it desired for the lasting practical value of its provisions—the "liberties" which personal rule and local misgovernment had violated? The first question will be discussed in Chapter III; the second in Chapters IV, V, and VI.

[24] McKechnie, *Magna Carta*, pp. 241-47.

CHAPTER III

MAGNA CARTA AND CONSTITUTIONAL DEVELOPMENT

Magna Carta and Arbitrary Exactions

In its final form the Great Charter provided no guarantees against the extraordinary aid. Articles 12 and 14 of John's Charter emphasized, and so may have helped to maintain, legal procedure in securing such aids, but yet this procedure was sanctioned by previous feudal custom, and John's successors usually followed it. The weight of evidence indicates that during the thirteenth century the barons did not appeal to the Charter as a real or fancied relief against this unwelcome tax.[1] On the contrary, they demanded, *in addition to* confirmation of the Charter, guarantees against precedent—repeated consent to aids must not destroy their right of refusal; they expressed a willingness to grant aids if they could have some control over expenditures and experimented with schemes to secure such control;[2] they submitted to exactions as the price of securing certain "liberties," especially those set down in the Great Charter itself.

Magna Carta and guarantees against precedent.—Apparently during the reign of Henry III, the barons were reluctant to recognize the king's right even to ask the aid in the unpopular form of a tax on moveables. The grant, as its name *extraordinary* implies, was intended only for cases of great and special need. There was little precedent for such a ruler as Henry III, who claimed to be always in great and special need. Then the new form, the tax on moveables, was not sanctioned by old feudal custom. In 1237 the barons obtained from the king a written guarantee that the thirtieth on moveables of that year should not form a precedent.[3] Later they assumed this guarantee to mean that such aids would not even be asked again, or at least if asked, free right of refusal remained to them: in 1242 and 1248 they based their refusal to grant an aid on the king's promises of 1237;[4] they complained of his "demanding money from them as a matter of course, as if they were the basest slaves."[5]

[1] For the exceptional case of 1255, and the possibility that the barons confused the various texts of the Charter, see Note A at the close of Chapter IV.

[2] See *infra*, pp. 33-35.

[3] *Nolumus etiam quod occasione hujus auxilii sumatur deinceps occasio vel trahatur ad consuetudinem petendi alias consimile auxilium, C. R.*, 1234-37, p. 545.

[4] 1242: "And because the king has never, after the granting of the thirtieth part, abided by his charter of liberties, but has even more severely oppressed them since, although he had, by another charter granted to them, promised that exactions of this kind should not become a custom, they now positively told the king that they would not give him any assistance on the present occasion"; Matt. Par. t., 1:402.

1248: When the king asked "pecuniary aid," he was "severely rebuked and reproached, in that he was not ashamed to demand such assistance at that time, especially because on the last exaction of a similar kind, to which the nobles of England were with difficulty induced to give their consent, he gave his charter that he would not again make such an exaction." *Ibid.*, 2:255.

[5] *Ibid.*, 1:397.

Gracious aids were granted more freely to Edward I, and the tax on moveables developed into a recognized source of income. But even a legal tax may be overworked, as the opposition of 1297 demonstrated. Whether or not the *eighth* of this year was imposed without consent, the frequency with which Edward had taken aids in the years just preceding may well have led the barons to fear that consent was fast becoming a mere formality. Edward tried to hush the opposition by a vague guarantee against precedent like that of 1237.[6] The barons insisted upon a more specific and comprehensive recognition of their right to grant or deny such impositions, but they did not attempt to find it in the Great Charter. In securing the *Confirmatio Cartarum* they restated in up-to-date form the principle of article 12 omitted after 1215: the *Confirmatio* is an attempt to cover all forms of direct and indirect taxation then in use, while article 12 dealt only with feudal revenue —scutage and special aids.[7] The guarantee, now embodied in a special document formally confirming Magna Carta and the Forest Charter, was thus in a sense restored to the Charter, although not actually incorporated in the text.[8]

After 1297, then, Magna Carta, with the supplementary *Confirmatio* provided against direct taxes—the "aids, tasks and prises," and indirect taxes, export duties on wool, unless "by the common consent of all the realm." By this time, however, the Great Charter was already well established. In the period 1225-97, its popularity could not have been based on any direct virtue in limiting royal exactions.

Magna Carta and bargaining for redress of grievances.—The procedure of granting an aid by consent made possible the development of the bargain between king and barons for redress of grievances. This practice, *incidental to* royal exactions, is of more interest in the perpetuation of the Charter than any idea that it was a guarantee *against* such exactions. Professor Adams has emphasized the contractual element in the original granting of

[6] *Rot. Parl.* 1:240.

[7] "Moreover we have granted for us and our heirs as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take of our realm such manner of aids, tasks, nor prises, but by the common assent of all the realm, and for the common profit thereof saving the ancient aids and prises due and accustomed.

"And for so much as the more part of the commonalty of the realm find themselves sore grieved with the maletote of wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we at their requests have clearly released it, and have granted that we will not take such thing nor any other without their common assent and good will; saving to us and our heirs the custom of wools, skins and leather granted before by the commonalty aforesaid." Adams and Stephens, p. 87.

[8] Cf. Adams, *Constitutional Hist. of Eng.*, pp. 190-91.

Interesting contemporary evidence that the *Confirmatio* was closely bound up with the Charter is furnished by Walter of Hemingburgh, who prefaces the preliminary *statutum de tallagio non concedendo* with the title *articuli inserti in Magna Carta;* Bémont, *op. cit.*, p. 88. Cf. Rishanger, *Chronica*, pp. 180-81: *Articuli adiecti ad Magnam Chartam sunt isti.*

Magna Carta. It was a restoration of the fundamental conception of the feudal relationship—contract: and this relationship forms the basis for the principle of the Charter that there is a "body of law, of recognized right, which the highest suzerain . . . could not violate."[9] Professor McKechnie describes this contract of 1215 in terms more nearly approaching the idea of a bargain: in return for the granting of the Charter "a price had been paid, namely the renewal of their allegiance"; and again "the *quid pro quo* was conditional homage, dependent as we learn from chapter 63 on observance of the Charter."[10] In the reissues and confirmations of the Charter the idea of contract persisted, but with the payment of the *fifteenth* in 1225, it underwent a change. The part of the king, as in 1215, was still a promise to observe the law, but that of the barons was no longer merely to swear allegiance and perform their regular feudal obligations. The confirmation of "liberties" was thenceforth secured only by considerable money payments to the crown.

It has been customary to set the year 1309 as the first instance of the granting of a subsidy on condition of redress of grievances, and to maintain that the custom by which "parliaments make use of the financial necessities of reluctant kings to force them to grant reforms," did not become a recognized practice until a generation later.[11] This is true for real parliamentary bargaining; such transactions as those of 1225 and 1237, were largely feudal in character, and "parliament" did not exist. But the feudal gracious aid was becoming a national tax; it was touching all classes in the community, and groups other than feudal tenants were coming to be given a share in determining it. As the group of grantors widened, so did the possibilities of the bargain. The barons and their allies of the thirteenth century no less than the parliaments of the fourteenth, knew how "to make use of the financial necessities of reluctant kings to force them to grant reforms."[12] Their list of grievances was already drawn up, in part at least, in the Great Charter.

The bargaining process is clearly indicated by the language of contemporary chroniclers who recorded the financial transactions between king and barons. Roger of Wendover, after describing the proceedings of the Council of 1224 in which the justiciar presented the needs of the king and asked for a grant of a *fifteenth* on all moveables, continues: "This proposal having been made, the archbishop and all the assembly of bishops, earls, barons,

[9] Adams, *Origin*, pp. 168-72; cf. pp. 183-85, 250-51.

[10] *Magna Carta*, p. 105, and note 1; cf. pp. 107, 109.

[11] Adams, *Outline Sketch of English Const. Hist.*, pp. 68-69; Taswell-Langmead, *Eng. Const. Hist.*, p. 215; Mitchell suggests the bargain element in some of Henry III's transactions.

[12] This development might well be included among the "steps in advance" described by Professor Adams as "prepared by certain events of the thirteenth and early fourteenth centuries which lie outside the history of the new Parliament." *Outline Sketch*, p. 65.

abbots, and priors, after some deliberation, gave for their answer that they would willingly accede to the king's demands if he would grant them their long sought liberties."[13] Writs sent to the sheriffs for the collection of the *thirtieth* of 1237, mention the confirmation of the Charter in that year.[14] Matthew Paris describes how the king promised to observe the Charter, agreed that any infringement of it would involve him in the sentence of excommunication, and permitted additions to his council: "on these conditions," concludes the chronicler, "a grant of the thirtieth . . . was made to the king to replenish his treasury."[15] Henry learned from these transactions: in 1244 when an aid was refused, he tried to break the opposition by voluntarily promising to observe the Charter.[16] In this connection Matthew Paris records a list of previous exactions drawn up by the barons, and concludes, "how the king will fulfil his promises and agreements in return for this present contribution and for all the others, He alone knows who is not ignorant of anything."[17]

An interesting example of the bargain is to be found in the answer of Queen Eleanor and Richard of Cornwall to Henry's demands for financial aid in Gascony. They report that they do not believe the barons will give any aid unless the king orders his officials in England to observe the Great Charter of Liberties; and advise Henry to send such an order, that the barons may be inspired to grant the desired aid.[18]

The bargain element, lacking in Edward's earlier aids,[19] becomes prominent again in the years 1297-1301 when there were crying grievances to be redressed. Official orders[20] and contemporary chronicles[21] note that the

[13] Wendover, 2:456. The language of other chroniclers is equally significant:
Petit rex a baronibus suis pro regni defensione auxilium generale. Barones vero vice versa libertates quasdam exigerunt a rege Johanne concessas . . . Ann. Dunstaple, p. 93.
Cum igitur rex benigne et hilariter libertates concessisset, comites et barones vice versa unanimi consensu cleri et populi quintamdecimam omnium mobilium concesserunt. Walter of Coventry, 2:257.
Rex cepit quintum decimum pro istis chartis. Ann. Burton, p. 236.

[14] *C. R.*, 1234-37, pp. 544-46.

[15] Matt. Par. t., 1:43-45; Cf. also the following: *data est tricesima . . . propter libertates regni, Ann. Osney*, p. 84; *concessa est . . . tricesima . . . pro confirmatione magnae chartae libertatum.* Wykes, *Chron.*, p. 83; The Annals of Waverley, Dunstaple, and Worcester mention the *thirtieth*, but not the confirmation of the Charters.

[16] Matt. Par. 4:373.

[17] *Ibid.*, t., 2:17-18. Some year later Matthew refers to the confirmations as the means by which the king "had extorted large sums of money." *Ibid.*, 3:24.

[18] *Royal Letters* 2:102. The king followed their advice. *C. P. R.*, pp. 1247-58, 280.
The phrases used by Matthew during these years are significant. According to him, the aid for obtaining the Sicilian crown was granted by the clergy, *ea tamen conditione adjecta, ut magnam carta, totiens promissam, emptam et redemptam, ex tunc inviolabiliter observaret;* 5:623. On two other occasions he speaks of the the charters as *totiens promissae, totiens redemptae. Ibid.*, pp. 495, 689; cf. also pp. 327, 359, 373, 536.

[19] In 1290 an aid was granted as a thank offering for the expulsion of the Jews. Nicholas Trevet, *Ann.*, p. 316; *et al.*

[20] *Rot. Parl.* 1:240, 241; Bémont, *op. cit.*, p. 92.

[21] *Flores Hist.* 3:102; Nicholas Trevet, *Ann.*, p. 368; Walter of Hemingburgh, *Chron.* 2:155.

aid of 1297 was granted in return for the *Confirmatio Cartarum*. A *twentieth* (later changed to a *fifteenth*) was given for the confirmation with the *Articuli super cartas* of 1300. Pierre de Langtoft's description of this transaction is as follows: all agree, he says,

> After Michaelmas, to raise for the king's use
> The fifteenth penny, in exchange for well-confirming
> The charter of liberties without abating anything,
> And for fixing the exact bounds for the perambulation
> Through the kingdom, without sparing anyone.

He quotes the barons at the Lincoln parliament as complaining to Edward: "how the great charter which cost so much money, he suffers not to be held nor the points acted upon," and as reminding the king that "it is not the manner for a king or prince to overthrow his covenant nor put in question a thing sold dear."[22]

Of course, it was no unusual thing in the thirteenth century for individuals to redeem charters by money payments, and sometimes buy again and again the right to use privileges already granted by charter:[23] this was a good money-making device for the king. But in these transactions over the Great Charter, at least, there was clearly an idea that the "purchase" or "redemption" of the document gave a character of obligation to the promises of the king, and hence should have ensured the observance of the "liberties." In 1253 the barons complained of violation of the Charters and asked the king to restore them because they had paid the *fifteenth* in 1225.[24] As a corollary to this principle came the idea that those who had not paid the price were not to share in the privileges. Collectors of the *fifteenth* of 1225 were directed to tell some objectors plainly, that they and their heirs would not be participants in the liberties if they refused to pay the aid.[25] In 1237 the barons tried to turn the tables on the king: the details of collection and deposit of the *thirtieth* were carefully specified, "so that if the king should endeavor to retract his promises, the property of each should be restored to him."[26]

The faithlessness of Henry III led the barons to adopt a practice analagous to that of parliament later in insisting that "redress of grievances *precede* supply." Their refusal to grant an aid in 1242 and 1248 was based

[22] Pierre de Langtoft, *Chronicle*, pp. 329-35; *Flores Hist.*, 3:109, 303.

[23] This is what happened in 1227 when Henry III called in all charters to be confirmed for a consideration, now that he was of age. The Fine Rolls of John's reign contain many cases of fines paid for the use of charters and privileges already granted. See Hardy, *Rotuli Finibus et Oblatis*, pp. xx, xlvi. Selling rights over again was one of Richard I's money-getting devices.

[24] *Qualiter pro ipsis libertatibus concedendis et confirmandis, quintamdecimam partem omnium mobilium, ab universis libere tenentibus anno gratiae mccxxv acceperat.* *Ann. Waverley*, p. 345.

[25] *Quod sciant se et heredes suos libertates concesse probis hominibus nostris per cartas nostras nunquam fore participes, quotquot ab hac quintadecima nobis danda se subtraxerint . . .* *C. P. R.*, 1216-25, p. 572.

[26] Matt. Par. t., 1:45-46.

partly on the grounds that the king had not kept the promises made in 1237.[27] In 1255 an aid was postponed: barons and prelates "came to the unanimous decision to send word to the king on behalf of the community, that the affair must stand over till Michaelmas, in order that they might have proofs of his kindness and his good faith in the meantime; so that if he should gain their goodwill and should reward their patience by observing the conditions of the charter so often promised and so often redeemed, they would so far as lay in their power, obey his will and aid him in his time of necessity."[28] These practices tended to give the barons some control over royal policy. In 1242, for instance, they refused help for the French war on the grounds that they had not been consulted concerning this expedition. When Henry made a belated pretext of asking their advice, they laid down specific conditions for his dealings with the French. If these were followed, and war still resulted, an aid would be forthcoming.[29] In 1297-98 the barons took advantage of Edward's necessities in more than one way to secure confirmations of the Charters. It was probably only because these necessities were so great that Edward yielded, and civil war was averted. At this time the barons bargained not only by means of the gracious aid, but with military service as well: both the continental and Scotch expeditions were held up pending a renewal of the Charters.[30]

These transactions have their constitutional interest and importance. They also have some significance for the perpetuation of the Great Charter The principle of these bargains must have helped to establish and perpetuate the document, since the liberties which had been "bought" were considered as especially inviolable, and binding upon the king. On the other hand, the very evident eagerness of the barons to "redeem" the Charter, now with a *fifteenth*, now with a *thirtieth*,—to grant this unpopular tax on moveables at all, and even to submit to the hated continental military service or a winter campaign in Scotland, indicates that they must have attached some very definite value to the document, which made it worth perpetuating. Wherein did the bargain lie from the point of view of the barons?

[27] Matt. Par. t., 1:400-402; 2:257.

[28] *Ibid.*, 3:120; cf. *Ann. Dunstaple*, p. 195.

[29] *Ibid.*, 1:402.

[30] Although some of the barons had denied liability to serve on the continent, the mesengers who took their list of grievances to the king added: *si Cartam Libertatum confirmare vellet et articulos corrigere, parati erant omnes eum sequi in vitam vel in mortem.* Walter of Hemingburgh, *Chron.* 2:123-24.

In 1298 the earls refused to proceed against the Scots, but promised, "As soon as they saw sealed by the King the Charter of freedom which they had formerly, that they would all go willingly into Albany against the Scots to prevent their doing more evil." Pierre de Langtoft, *Chronicle*, p. 305; cf. Rishanger, *Ann. Angliae et Scotiae*, pp. 391-92.

Magna Carta and Limited Monarchy

The theory of limited monarchy.—Commentators on Magna Carta emphasize as its chief contribution, the two great constitutional principles which it embodied. These are stated by Professor Adams as follows: "The body of Magna Carta and clause 61 constitute together the first inclination of the constitution towards a limited monarchy, and mark the point of time before which no tendency in that direction can be found, the one as insisting that there is a body of law which the king is bound to observe, the other as affirming that the community of the ruled has the right to set up machinery to enforce the king's obligation, and if this proves insufficient, to levy war upon him."[31] Professor McKechnie emphasizes the same idea: "In the forefront of this long catalogue of virtues, however, there lies the one great cardinal merit of the Charter, which has already been insisted on, namely, that it is, in essence, an admission by an annointed king that he was not an absolute ruler; that he had a master in the laws he had often violated but now once more swore to obey; that his prerogative was defined and limited by principles more sacred than the will of kings; and that the community of the realm had the right to compel him, when he refused of his own free will, to comply."[32] According to this theory, appeals to the Great Charter were made whether or no that document contained a specific remedy for the particular transgressions of the ruler at any given time. It was a means of reminding him that there was a body of law which he was bound to observe, and that the community had the right to compel such observance, if necessary.

Such principles were acted upon in 1215, when the Charter was wrested by force from a king who had exceeded his prerogative, or, to keep more nearly to the ideas of the age, a suzerain who had violated his feudal contract. During the minority of Henry III, the period of the revisions, this element was lacking. The tyrant out of the way, nothing was to be feared from the child king: article 61, setting forth the right and the method of restricting royal caprice, was omitted from all reissues. The insertion in the text of 1225 of the clause, *spontanea et bona voluntate nostra dedimus et concessimus,* marked a further departure from any idea of forced compliance by the crown. Still, the very existence of a body of written law, and its sanction by the king upheld the first of the two principles. As for the second, although article 61 was abandoned, the fact remained that a king had once been forced to keep within the law, and that by a people to

[31] Adams, *Origin,* p. 183.

[32] *Commemoration Essays,* p. 21; cf. pp. 1, 16. Cf. Bémont *op. cit., lxix: La Grande Charte de 1215 a, en somme, crée un droit nouveau, le droit de la nation qui veut imposer des limites au droit absolut de la royauté.*

whom precedent was so sacred and binding a force that the bishop of Lincoln once urged against the repetition of a certain act, "a thing done twice becomes a custom."[33] It may be that in so striking an instance as the coercion of John at Runnymede, a thing done *once,* becomes a custom.[34]

The value of Magna Carta as an enunciation of the theory of limited monarchy is clear to the historian. It played a part, no doubt, in the worth of the Charter to later centuries. It is difficult to estimate to what extent, if at all, thirteenth century Englishmen were *conscious* of this aspect of the document, or whether it was primarily for this that they valued it. The great council of this period boasted no clerk of parliament to note down speeches on constitutional principles—the limits of royal prerogative or the "ultimate abode of sovereignty"—if any such had been made. It was the exceptional chronicler who kept much record of political events. There was no such thing as a lay chronicle setting forth the views of the average baron or knight.[35] The chronicler always belonged to the clerical class, and the clergy had a peculiar interest in the maintenance of the Great Charter.

The principle of limited monarchy might at any time, under favoring circumstances, emerge from feudal theory. It might develop from the idea of the power and independence of the vassal in his own domains, the root of the feudal conception of legislation; the vassal must have the right to consent to any laws affecting his own lands and tenants.[36] It might develop from the contractual relationship. Feudal law, of course, recognized the principle that if the overlord broke his side of the contract, the vassal, by the ceremony of *diffidatio,* or formal renunciation of allegiance, could withdraw his fealty and terminate the contract. No longer pledged to his lord, he was free to transfer his allegiance to another, and even to make war on his former suzerain. This feudal principle extended to the greatest of overlords, the king. It was upon this that the barons had acted early in

[33] *Binus enim actus inducit consuetudinem.* Matt. Par., 5:325-26.

[34] There is contemporary evidence that John's days were not forgotten. In 1234 Archbishop Edmund reminded the king in full council of the evil done by Peter des Roches in John's time. Prothero, *op. cit.,* p. 61.

Henry, himself, when opposed by the Master of the Hospitallers, is said to have exclaimed, "Will ye expel me like my father John?." *Ibid.,* p. 177.

In 1252 the clergy told Henry of suspicions that his taking the cross was only a subterfuge to get money: "it is to be feared that this king, following in the steps of his father, assumed it in the same way, and with the same intention as his father; namely to oppress and trample under foot his natural subjects." Matt. Par. t., 2:520-21.

[35] Although this lack is partly remedied by popular songs and poems of non-clerical authorship, these are usually brief and fanciful. The very political astuteness of Matthew Paris' ample chronicle makes it a bit dangerous. To what extent are his reports of political events colored by his own ideas; to what extent are these ideas shared by clergy and baronage at large?

[36] An interesting aspect of feudalism recently pointed out by Professor Vinogradoff: "Similar phenomena meet our eye when we come to consider the process of *legislation* obtaining in the feudal world. It is evident in theory that a baron, being a sovereign, could not be subjected to any will but his own, and that therefore such common arrangements as had to be made in medieval society had to be effected on the same lines as modern international conventions. And indeed we find this idea at the root of the feudal doctrine of legislation . . ." *Cambridge Medieval History* 3:470-71.

1215, before the granting of the Charter, and again in 1215-16 when they declared war on John and summoned Louis to be their overlord. It might have been used again under similar provocation, charter or no charter. Neither feudal custom nor article 61 of Magna Carta provided any peaceful constitutional means of coercion. If the king failed to abide by the contract, the final issue must be civil war. After 1215, as before, the sword was still the only effective means of enforcing individual or group rights. It was the weapon used by the barons on more than one occasion.

In 1234, for instance, the magnates refused to appear at Oxford and threatened, so the story goes, that if Henry did not dismiss Peter des Roches, they would choose another king. When, after a third summons, they finally appeared, it was in arms; Peter was dismissed.[37] In answer to Henry's demands, 1258, of one third of the income of all England for the Sicilian project, the barons "appeared in full armour at the council-hall at Westminster, . . . ," and "laid down their swords at the door";[38] civil war soon followed. Individuals were no less inclined to defend their rights by this rough and ready method. The Earl Marshal replied to Henry's accusation that he was a traitor: " 'You lie: I never have been, and never will be, a traitor . . . . What can you do to me? how can you harm me if you are ruled by justice?' To this the king replied, 'I can seize your corn and cause it to be threshed and sold; and thus you will be subdued and humbled.' Then said the earl, 'I will cut off the heads of those who thresh it and send them to you.' "[39] Earl Warenne's famous answer to Edward's *quo warranto* proceedings was similar: unsheathing a rusty sword, he declared to the commissioners, "Here is my warrant. My ancestors won their lands with the sword. With my sword I will defend them against all usurpers."[40] Men of this stamp hardly needed the backing of Magna Carta or any other "body of written law," to enforce their rights against a suzerain who violated the contract.

While this feudal principle, supported by armed force, served temporarily to check the king, the latter half of the thirteenth century saw two new developments which would eventually replace it. A theory of limited monarchy was being formulated which was more national and less feudal in conception, more consciously and formally expressed; attempts were made to devise some constitutional machinery that would make civil war unnecessary.

This theory, as Professor Vinogradoff points out, emerges naturally from the feudal idea of contract, the idea that the overlord, too, had his obligations. "This view was readily extended from the notion of a breach of

[37] Prothero, *op. cit.*, p. 60.

[38] *Ibid.*, p. 188.

[39] Matt. Par. t., 3:150.

[40] Quoted, Tout, *Hist. of Eng.*, p. 149.

agreement between the lord and his tenants to a conception of infringement of laws in general. In this way the feudal view could be made a starting-point for the development of a constitutional doctrine."[41] The most famous statement of the theory that the king is subject to the law is Bracton's. After affirming that the king has no equal, much less any superior in his kingdom, he makes the oft-quoted statement: "but the king himself ought not to be subject to man, but subject to God and to the law, for the law makes the king. Let the king, then, attribute to the law what the law attributes to him, namely dominion and power, for there is no king where will rules and not the law." Bracton enlarges upon this statement with proofs and illustrations drawn from the tenets of the Christian religion and the Roman law. In this passage he does not go so far as to admit that if the king transgresses the law his subjects may force him to obey, but suggests that if he fails "to correct and amend his own act, it is sufficient for his punishment that he await the vengeance of the Lord."[42] In another passage (now known to be a gloss on Bracton), it is suggested that the great barons, since they are the king's peers, as it were, may correct his errors.[43] The author of the "Poem on the Battle of Lewes" goes still farther. Like Bracton, he emphasizes the supremacy of the law. He also maintains the right of the barons to coerce the king who does not observe the law, and insists on the obligations of a ruler toward his people: "let him who reads know, that he cannot reign who does not keep the law"; and again, if the king approves measures destructive to the kingdom, "then the magnates of the kingdom are bound to look to it that the kingdom be purged of all errors. To whom if such a purgation of errors belongs, . . . how can it otherwise than appertain to them to look out that no evil may happen which would be injurious?" . . . and let the king never set his private interest before that of the community; . . . For he is not set over them in order to live for himself; but that his people who is subject to him may be in safety."[44] These statements contain no reference to Magna Carta; it is hardly to be expected that they should. It is interesting to find the author of the *Mirror of Justices,* however (almost unconsciously perhaps), making some connection between such constitutional theory and the Charter. "The first and sovereign abuse," he complains, "is that the king is beyond the law, whereas he ought to be subject to it, as is contained in his oath." After mentioning

[41] Vinogradoff, *op. cit.*, p. 461.

[42] *De Legibus Angliae* 1:39-41.

[43] *Rex autem habet superiorem, Deum. Item legem, per quam factus est Rex. Item curiam suam, videlicet comites, barones, quia comites dicuntur quasi socii regis, et qui habet socium, habet magistrum, et ideo si rex fuerit sine freno, i.e. sine lege, debent ei fraenum ponere. Ibid.* 1:268.

[44] Wright, *op. cit.*, pp. 94, 101-2, 117. The poem, consisting of 968 lines, contains many other striking passages. It was written probably shortly after the battle of Lewes by a "radical friar."

two other "abuses," infrequent parliaments, and the fact that the laws are not put in writing, "so that they might be published and known to all," this writer continues, "whereas the law of this realm is founded upon the forty articles of the Great Charter of Liberties . . . ."[45]

Methods devised to control the king.—The existence of good laws, and of theories of royal obligation, were futile if the king and his servants could not be compelled to abide by them. Constant recourse to civil war was impractical: some other and better means must be devised. The reign of Henry III was ripe for experiments along this line. The power of the regents—men of the great magnate type—during the minority, the character of Henry's favorites in later years, and the general conviction that they gave "evil council,"[46] drew attention to the king's servants as never before, and helped to develop ideas of the desirability of controlling them. But just how to exercise the desired control remained a problem throughout the reign: "the nobles had not yet learned how to keep their Proteus in check for it was an arduous and difficult matter."[47] The great council was not an effective medium. Here the barons could complain, they could dictate, they could bargain, and exact promises, but when the council dispersed, there was no way of insuring that these promises would be carried out.[48] It was necessary to control the small permanent council, the administrative officials who actually carried on the work of government, and were constantly in attendance on the king. The methods attempted by the barons to this end were three: to place men of their own stamp in the great administrative offices; to afforce the king's small council; to create some special committee or group of counsellors with special powers and functions. Attempts along the first two lines proved futile without the third: the king yielded temporarily or not at all. It is in the third method that we find some slight possible connection with the Great Charter, but only in its original form, the text of 1215.

Article 61 of John's Charter had not gone so far as to create a special group of counsellors as a regular part of the government. The twenty-five barons were to remain in the background until John should break some provision of the Charter. Then a subcommittee of four was to petition

[45] *Mirror of Justices*, pp. 155-56.

[46] The king himself was not above pleading the excuse of "evil counsel" on occasion: "the king on reflection, acknowledged the truth of the accusations, although late, and humbled himself, declaring that he had been too often imposed upon by evil advice . . . ." Matt. Par. t., 3:279.

[47] *Ibid.*, p. 279.

[48] The force of this was well brought home to the barons in attempting to control the expenditure of the *thirtieth*, 1237. The money was to be placed "in some convent, sacred house, or castle, so that if the king should endeavor to retract his promises, the property of each should be restored to him." The money was to be expended by the advice of four nobles. In 1242, when Henry asked for another aid, the barons replied that as they "do not know and have not heard that any of the aforesaid money has been expended at the discretion . . . of the said four nobles, they firmly believe, and in fact well know, that the king has the whole of that money untouched." But the damage was done: the money was gone, and Henry was asking for more. *Ibid.*, 1:45-46, 401.

the king for redress. If he did not comply, the twenty-five then led the "legalized rebellion" against him. A step in advance, but along similar lines, was made in the proposed plan of 1244 for the government of the kingdom. This plan (never actually put into effect) provided for the choosing "by common consent" of "four of the most discreet persons of rank and power" to be of the king's council, and to play an important part in government from day to day. Their power was to be greater than that of other counsellors and officials;[49] they were to guard against the particular evils of royal policy in the past; they could be deprived of office only by "common consent" of those who had chosen them.[50] One of the original twenty-five barons of 1215, Richard de Muntfichet, was a member of the temporary committee of twelve which drew up this plan in 1244.[51] Was de Muntfichet responsible for the "four counsellors," reminiscent of the subcommittee of four in 1215?

The more elaborate scheme of the Provisions of Oxford, 1258, was only the logical culmination of these earlier attempts. There was to be nothing new in the routine organization of government, but the regular offices were to be controlled by a council of fifteen who "shall have power to counsel the king in good faith concerning the government of the realm and all things which appertain to the king or to the kingdom; and to amend and redress all things which they shall see require to be redressed and amended. And over the chief justiciar and over all other people."[52] It is interesting to find one chronicler who states that the Provisions of Oxford were based on Magna Carta,[53] but one is left to surmise what he meant by this statement. Did he have in mind any similarity between the committee of twenty-five and the council of fifteen? Was he thinking of the many important clauses which restated in more complete and specific form, the provision of John's Charter that officials must be men "who know the law of the land and mean to observe it well?"

[49] In 1237 the barons succeeded in afforcing the small council with three of their own number, but these men had no pre-eminent position or special powers. Matt. Par. t., 1:45.

[50] These shall remain by the king, and if not all of them, at least two shall always be present to hear the complaints of each and all, and, as soon as they can, to afford relief to those who are suffering injury. By their inspection, and on their evidence, the king's treasury shall be managed, and the money granted to him by the community in general shall be expended for the benefit of the king and kingdom, according as they shall see to be most expedient and advantageous; and they shall be the preservers of the said liberties; . . . a justiciary and a chancellor shall be elected by all; and as they ought to be frequently with the king they shall also be amongst the number of the preservers of the liberties." *Ibid.*, 2:12.

[51] Adams, *Origin*, p. 298.

[52] *Select Charters*, p. 387.

[53] Rishanger, *Chronicle*, pp. 16-17, in describing Louis' arbitration in the *Mise of Amiens*, states that it annulled all statutes, provisions, ordinances and obligations determined on at Oxford *hoc excepto quod antiquae cartae regis J., universitati Angliae concessae per illam sententiam in nullo intendebat derogare, sed decrevit eam inviolabiliter observari. Quae quidem exceptio comitem Leycestriae et caeteros qui habebant sensus magis exercitatos, firmiter tenui in proposito suo ad conservandum statuta Oxon., quia super illam cartam fundata fuerant.*

With the royal victory in 1265, all machinery for baronial control was naturally abolished, but some sureties were given for the future. The confirmation of 1265 gave promise of peace and good government and the observance of the Charters. In case these promises were violated the king grants that: "it shall be lawful for every one in our realm to rise against us and to use all the ways and means they can to hinder us; . . . that they shall do everything which aims at our injury and shall in no way be bound to us, until that in which we have transgressed and offended shall have been by a fitting satisfaction brought again into due state . . . ."[54] This was a return to the principle of article 61, without the machinery of control; it was, in fact, nothing more than a formal statement of the principle admitted by ordinary feudal practice before 1215. The phrasing of the confirmation is so like that of article 61, as to suggest that the later document may have been suggested by, or even actually modelled on, the first text of the Great Charter.

In the constitutional crisis of Edward's reign no machinery for control of the king was set up. Edward's extreme military necessities forced him to yield some of the barons' demands, and so avert an open breach. He was not the type of man to put up with "over-kings," be they twenty-five, four, or fifteen. When the barons asked the right to elect the great officers of state, the king humbled them with the scornful, "Why do you not ask my crown that one of you may wear it, and leave me only the name, that little word king?"[55] Constitutional progress in this reign lay rather in the direction of limiting arbitrary exactions, and in the beginnings of parliament which was soon to succeed baronial counsellors as "preservers of the liberties." The scheme of putting the government into commission in the hands of a few great magnates was not resumed until the reign of Edward II.

These experiments were neither lasting nor even temporarily satisfactory, but it was something that they kept alive the tradition and practice of limited monarchy, the idea of controlling the king's servants. Meanwhile the great council was developing the successful parliamentary tactics of succeeding centuries, and acquiring the composition which was to make it the real and permanent constitutional check upon the monarchy. In so far as the original text of the Great Charter furnished precedents and suggestions for these experiments, here was one element in its value to thirteenth century Englishmen, but this value must not be exaggerated. The principle of limited monarchy might at any time, under favoring circumstances, emerge from feudal theory. Some device to carry it out might have been originated anew in 1244 or 1258 without precedent, just as it was in 1215.

[54] Adams and Stephens, p. 68; see *Select Charters*, pp. 301 and 404-5, for comparison of the text of the two documents.

[55] Rishanger, *Ann. Regis Edwardi Primi*, p. 460.

Perhaps Magna Carta was as responsible for these schemes in creating a need for them as in suggesting a method: one important function of the special counsellors in each case was to act as "preservers of the liberties."

In summary it may be said that Magna Carta made no adequate provision against arbitrary exactions, though incidentally it served as a means of developing the practice of bargaining for redress of grievances. There may have been some realization of the value of the Charter in formulating theories of limited monarchy, but the records give little evidence of it. There was some possible connection between article 61 and later experiments to control the king. Certainly the striking act of coercion in 1215 was remembered. But these factors would hardly account wholly or primarily for popular estimation of the Great Charter after 1215.

More important for this early period, than the fact that the Charter embodied the principle that there is a body of law which the king is bound to observe, the great document *actually set down in specific written form what much of that body of law was.* Custom and usage had been considered of as great or greater binding force than the written document. The policy of Henry III and Edward I in attempting to override or ignore privileges which were not substantiated by specific written grants, brought charters into new importance. Possessors of cherished "liberties" hastily searched out old documents for royal inspection, only to find that they were too vague and general in terms to convince the royal official. Magna Carta was a long and explicit document for its day. Its text offered real tangible defense against royal encroachments. The king might evade or misinterpret, he could not gainsay the written word.

Evidence will be given in the following chapters to prove that most of the provisions of the Great Charter did not become obsolete, but continued to be of vital interest to Englishmen throughout the thirteenth century. That it was these various specific "liberties" which were redeemed for large sums of money, and which constituted the chief virtue of the document in popular estimation; that these liberties concerned enough groups and classes within the kingdom to revive from time to time that united opposition against the king which had secured the Charter in 1215; in sum, that *general interest in Magna Carta*, and *combined effort to secure its enforcement*, were the vital factors in its perpetuation.

CHAPTER IV

LASTING PRACTICAL VALUE OF THE CHARTER: MAGNA CARTA

While stressing the bearing of Magna Carta on general constitutional principles, Professor McKechnie suggests that "the importance of the Charter for the men of 1215 did not lie in what forms its main value for the constitutional theorists of today. To the barons at Runnymede its merit was that it was something definite and utilitarian—a *present* help for *present* ills . . . . To the barons every clause was valued because it gave relief from a current wrong; little they thought of its influence on the development of constitutional liberty in future ages." He quotes the chronicle of a contemporary minstrel, who, in referring to the Charter, mentions particularly four provisions, those in regard to disparagement of heiresses, loss of life or limb for deer-killing, encroachment on feudal courts, and the baronial executive committee. "The selection of these four topics as of outstanding value gives point to the view already expressed that to the men of 1215 Magna Carta was an intensely practical document, valued as an immediate remedy of present ills, with nothing of the glamour of romance."[1] There is evidence that this utilitarian character of the Great Charter lasted much longer than has been usually recognized,[2] and consequently played a considerable part in its perpetuation as a document. This lasting practical value of the Charter throughout the thirteenth century is indicated; (1) by contemporary appeals to various specific provisions; (2) by the repetition or amplification of some provisions in later statutes, by evidence of observation in the courts, and by comments in legal treatises; (3) by discussion, interpretation, and reinterpretation of certain articles.

[1] McKechnie, *Commemoration Essays*, pp. 9-10.

[2] In stressing the general constitutional bearing of the Charter, neither Adams nor McKechnie, of course, intimates that this constituted the only factor, or that practical value ceased, in the years immediately after 1215. Neither do they suggest a time at which specific provisions have become obsolete, and the constitutional factor alone survives. Interested primarily in constitutional principles, they simply have not followed up the question of lasting practical value after 1215. McKechnie gives some evidence of the vitality of certain provisions, by indicating to what extent they were observed in the reigns of Henry III and Edward I. Cf. however, Jenks, in the *Myth of Magna Carta*, where he maintains that from 1258 on, "the demand for the Charter is still raised, but chiefly as an ancient and stirring battle cry." *Independent Review* 4:271.

Contemporary Appeals to Specific Provisions[3]

Contemporary appeals to specific articles of the Great Charter are not confined to any one class of provisions, or to any special period of the thirteenth century. The cases cited below range from 1221 to 1306; the appeals are made usually by individuals, occasionally by groups; they are directed sometimes to the king, sometimes to officials of the local royal courts. These appeals may be conveniently grouped according to the class of provisions to which they relate: those involving the rights of towns and the merchant class; those concerned with feudal law and custom; those relating to royal or feudal justice, court procedure, amercements, etc.

Provisions relating to towns and the merchant class.—There are relatively few appeals to the Great Charter on the part of London, the Cinque Ports, or the other towns whose liberties were guaranteed in a general way by article 9.[4] This is probably due to the fact that these towns possessed charters of their own, specifying in detail the liberties granted by successive rulers. Such charters were much more valuable in proving a right than the vague terms of article 9,[5] but the sanction of the Great Charter was not without value, as a very notable confirmation of these private charters.

Matthew Paris evidently believed that the Great Charter should have protected London against royal abuse. He records how the king, "shamelessly transgressing other articles of the same charter, vented his rage upon the prelates, nobles, and citizens of London."[6] There is at least one piece of evidence that the Londoners themselves believed that article 9 of Magna Carta should have protected them in the enjoyment of their various civic liberties. The *Chronicles of the Mayors and Sheriffs of London* describes the reading of the confirmation of the Charters, 1265, in the Gildhall before all the people. On the same day, he says, were also read letters patent from the king taking the government of the city into his own hands: "which letters were contrary to the aforesaid Charter, through which Char-

[3] In this and the following sections the discussion is based only upon references in which the Charter is specifically mentioned. No attempt has been made to collect evidence illustrating the observance or non-observance of practices laid down in Magna Carta where the source material does not reveal conscious connection between the practice and the Charter. A practice may have been observed, or its observation demanded, because it was the custom and law of the land anyway, without conscious connection with its embodiment in the Charter. For instance, Matthew Paris records how, during the Gascon campaign of 1242, William de Roos "had not the means of staying any longer with the king on the continent, whereupon the king precipitately ordered him to be disseised of his lands, although without the judgment of his peers." (Matt. Par. t., 1:434.) On this occasion both William Roos and the chronicler may have been mindful of the "liberty" embodied in article 29 of Magna Carta, but Matthew's brief account does not justify such an assumption.

[4] References throughout are to articles of the 1225 Charter. For text, see Appendix A.

[5] See, for instance, the elaborate *inspeximus* of all London's charters from William I to Edward II. *Liber Custumarum* 1:246-68.

[6] Matt. Par. t., 3:13.

ter the city ought to have all its liberties and free customs, and thus the citizens ought to choose their sheriffs and mayor for themselves."[7]

The guarantee of the liberties of the Cinque Ports by article 9 is recognized in the *articuli super cartas* of 1300. Article 7 of this document forbids the constable of Dover Castle to distrain the men of Dover to plead elsewhere or in other manner than provided by their charters: "according to the form of the charters which they have from kings concerning their ancient liberties confirmed by the great charter."[8]

The Londoners were also interested in article 23. They had secured, in addition to the general enactment of article 23 of Magna Carta, three special charters, one of which dealt with the removal of kydells in the Thames and Medway. A complaint against the violation of this right, raised by the citizens in 1253, was based on city charters and the Great Charter. City officials assumed the responsibility of punishing offenders, who were fined and their nets burned. When questioned by the king, the officials justified their action on the grounds that the offenders had incurred the sentence of excommunication directed against violators of the Great Charter.[9]

In 1302 similar complaints were raised. This time city charters were not mentioned, but appeal was made to Magna Carta. In answer to a petition, a commission was appointed: "to enquire touching a complaint of the citizens of London and other merchants of the realm passing along the Thames with vessels between that city and the town of Oxford, that magnates and others having lands near the river in the counties of Middlesex, Surrey, Buckingham, Berks, and Oxford have constructed weirs, mills, and divers enclosures without license, and have made the weirs and enclosures narrower and higher than they used to be, so that vessels laden with victuals, and the fish living in the river cannot go through as were wont; and that fishermen catch fish with too narrow nets, contrary to Magna Carta; and they are to abate the same."[10]

The Londoners were on the side of the barons in the crisis of 1215-16, 1258-65, and 1297-1301. In 1297 the earls of Hereford and Norfolk and their followers sought alliance with the Londoners to secure a confirmation

[7] *Chronica Maiorum et Vicecomitum Londoniarum*, pp. 87-88.

[8] *Solonc la fourme des chartres qu'l unt des Rois de leur franchises aunciennes afermées par la grant chartre.* Bémont, *op. cit.*, p. 104.

[9] *Liber Albus* 1:500-502. The next year Earl Richard is said to have burned his weirs first, in order that he might then freely burn those of others. The chronicler notes in this connection that weirs are mentioned in the Great Charter, but does not explain whether the destruction of weirs in this year was due to the Charter and the agitation of 1253. Bartholomew Cotton, *Historia Anglicana*, p. 131.

For the Londoners' private charters, see McKechnie, *op. cit.*, pp. 345-46.

[10] *C. P. R.*, 1301-7, pp. 88-89.

of the Great Charter, and held out to them the possibility of recovering their own lost privileges.[11]

Provisions concerned with feudal law and custom.—In 1258 Robert Tateshale, a tenant-in-chief of the king, was accused of having unjustly dispossessed a certain prior of a free tenement. Robert claimed that no proceedings of novel disseisin should be allowed, and for the following reason. The "tenement" in question was a fee, which had originally been held by his own tenant, William. But while he, Robert, was overseas with the king, William had given the fief to the prior. Since the latter held it in free alms, Robert would lose the service of one knight. Now this was manifestly against the "liberty" which the king had granted the magnates: no one must give his entire holding in free alms so that anyone lose his service thereby.[12] The prior gave up the fief for a hundred shillings, and returned to Robert the charter by which William had granted it. Here was a successful appeal to article 32 of Magna Carta. Although this provision may have been intended primarily to secure adequate military service to the king, it protected his tenants also. Failing the recovery of the fee, Robert might have been hard put to it to produce his customary service, or fined for failure to do so.

In a letter of 1284, Archbishop Peckham complains to Robert Burnell, then chancellor: "we are exceedingly astonished that you have permitted letters to go out from your chancery for disseising us, contrary to magna carta, of the custody of our priory of Dover."[13] Peckham probably had in mind the provision of article 33, which assured to patrons of abbeys, custody during vacancies. He asks that the order be revoked, and politely suggests that it must have been issued without the chancellor's knowledge.

In a York plea of 1290-91, the court recognized the rights of a widow, as set forth in article 7 of the Charter, to remain in the house of her husband forty days after his death, and to receive her dower within that time.[14] In this case it was discovered that the house in question was in the hands of the mesne lord, who had taken possession of the heir. The brief record of the *Abbreviatio* does not indicate what justice was done the lady.

In 1306, a certain Aline, wife of John the Breton, claimed that her husband held from the king "for a certain annual farm, and not by military service." On this ground she petitioned before the king's council for the guardianship of her eldest son, still under age, *secundum formam et tenorem*

[11] *Rogaverunt etiam Londonienses, tanquam amicos et confratres, ut in expetendis libertatibus Magnae Cartae eis assistere vellent, et curam adhibere fidelem ita quod jura perdita recupare possent et recuperata tueri.* Walter of Hemingburgh, *Chron.* 2:127; cf. Trevet, *Ann.*, p. 364.

[12] Case 1248, *Bracton's Note Book* 3:263-64. In this case the Charter is not specifically mentioned: *hoc est manifeste contra libertatem quam Dom. Rex concessit magnatibus . . .* ; in none of the eight references to the Charter given in the *Note Book* is the name *magna carta* used.

[13] Peckham, *Epistolae* 2:666.

[14] *Placitorum Abbreviatio*, p. 223.

Magne Carte.[15] Here the appeal must have been based on article 27, which provided that the king would not claim custody of the heir of those holding by fee farm, soccage, or burgage tenure. The royal right of wardship was limited to those holding by military service.

The royal promise embodied in article 31, not to wipe out subtenancies by claiming escheat or custody over the subtenants of an escheated barony profited a certain John de Neville in 1276. Neville brought suit against Constance, widow of one of his tenants holding by military service. Constance was attempting to retain custody of the holding by maintaining that her husband had held in chief of the king. Exchequer records revealed, however, that the land in question was part of a barony which was not originally granted by the crown and so held *ut de corona*, but had come into the king's hand by escheat, and held *ut de eschaeta*. For this reason the court ruled that since "in magna carta . . . it is contained that if anyone etc.," John de Neville regain custody of the land and Constance "be in mercy."[16]

Abuses of purveyance received only a limited remedy in Magna Carta. When put to the legitimate purpose of supplying the king's household, purveyance was not abolished or even restricted. The Charter merely put a check upon royal officials intent on supplying their own "official or personal needs." Articles 19 and 21 regulated provisioning of castles, requisitioning of horses and carts, and appropriation of timber.[17] Continued grievances of one kind and another connected with purveyance appear in the complaints of chroniclers, and the more elaborate regulations of later decrees.[18] A draft of *articles of the clergy* proposed before the king in council some time between 1275 and 1285 complains against beadles and servants of the king who seize and take away ships, barges, and horses of clerks and other ecclesiastical persons for conveying their goods. On this occasion the allusion to the Charter comes from the king: he forbids the practice as contrary to the Great Charter and "his statute," threatens to punish offenders, and grants permission to the clergy to punish them.[19] The statute in question was evidently the Statute of Westminster I, which provides at some length against abuses of purveyance, and of prolonged and unwelcome "vis-

[15] *Rot. Parl.* 1:197. This case was referred for trial before one of the justices, and someone was to be present *ad dicend 'pro Rege si quid dicere sciverit.*

[16] *Placitorum Abbreviatio*, p. 192. The record quotes this introductory phrase only, evidently a reference to article 31, the last clause of which provides, *nec nos occasione talis baronie vel escaete, habebimus aliquam vel custodiam aliquorum hominum nostrorum nisi alibi tenuerit de nobis in capite, ille qui tenuit baroniam vel escaetam.* Cf. *Ibid.*, p. 322, for a similar case, 9 Ed. II.

[17] McKechnie, *op. cit.*, pp. 329-33, 334-36.

[18] Especially the *Articuli super cartas.*

[19] *Letters from Northern Registers*, p. 76.

its" of great men and their retinues at religious houses.[20] It is interesting to note that in spite of the greater comprehensiveness of the later document and its provision for enforcement, the Great Charter is nevertheless thought worthy of mention in the king's reply. The *gravamina* presented by the clergy to Edward I in 1299 voices a similar complaint. This petition contains no reference to the statute of 1275; the practices of the king's officials are said to be against the "liberty of the church," and especially Magna Carta.[21] The king agreed to recognize the privileges of the clergy except in respect to newly acquired property.

The last part of article 5, which promised the same restrictions on the king's use of ecclesiastical vacancies as applied to lay wardships, was ill observed by Henry III. The clergy complained constantly of the king's abuse of ecclesiastical vacancies, and on at least three occasions pointed out that this abuse was a violation of the Great Charter. Matthew Paris comments on Henry's policy on the death of the Abbot of St. Augustine as follows: "the king by way of showing how little he intended to observe the oft-mentioned charter, by means of his satellites, plundered the goods of that church, to its utter ruin . . . ."[22] The first article of an elaborate list of grievances presented by the bishops to the king in 1257 complains: "First, that when cathedral or conventual churches are vacant, the convents are made to pay talliage; the lands, parks, and warrens, are left untilled; the buildings go to ruin, the goods are plundered, the villains are impoverished and ill-treated, so that the prelates who come to the succession are compelled to beg, for a great length of time, which is contrary to the charter of our lord the king, and also the liberty of the church."[23] A similar complaint appears in the articles of Merton, 1258.[24]

Provisions relating to royal or feudal justice.—Appeals to legal provisions of the Charter are the most numerous. They include attempts both to bolster up feudal courts, and to secure the benefits of royal justice as defined and limited by the Charter.

"The most reactionary" chapter in the Charter, is Professor McKechnie's characterization of article 24: *the writ which is called praecipe shall not for*

[20] *Statutes of the Realm* 1:27: "And that none shall take horses, oxen, ploughs, carts, ships, nor barges, to make carriage without the assent of him to whom such things belong. . . . And they that offend against these acts, and therefore be attainted, shall be committed to the king's prison, and after shall make fine, ..."

[21] *Contra libertatem ecclesiae, et seriem magnae chartae.* Wilkins, *Concilia* 2:320.

[22] Matt. Par. t., 3:13.

[23] *Ibid.*, 3:482.

[24] "Moreover, when our lord the king obtains the ward of vacant cathedral or conventual churches, he wastes and consumes the goods of these same churches by means of his bailiffs, not only contrary to the liberties of the Church, but also contrary to the rights of the Church and the charter of common liberties which he has given." *Ibid.*, 3:465.

the future be issued to anyone, regarding any tenement whereby a freeman may lose his court.[25] If the barons expected this provision to secure them adequate protection against encroachments on feudal justice, they were disappointed. The "reactionary" force of the article was diminished by the royal policy after 1215. "Its letter was stringently observed, but its spirit was evaded," by such devices as *exceptions,* the use of writs of right, and the newer writs of entry, especially writs of cosinage.[26] Bracton notes a discussion among some of the magnates in 1236, "over a certain writ which is called Precipe, and concerning it certain ones said that it was manifestly against the charter of liberties of the Lord King granted to the barons of England." Even so, it was finally agreed, on this very occasion, that writs of cosinage were permissable.[27] Nevertheless, article 24 gave the barons a basis for protests which were not always unavailing. The Year Books of the reign of Edward I record two cases in which lords claimed their courts on this ground. In 1292 the lord seems to have won his case, but the record is obscure on this point. The case was complicated by the introduction of a second exception. Since this was probably not good, the result would seem to have been due to his first claim based on Magna Carta. In a similar case, 1302, the exception was recognized as valid, but disallowed on the grounds that the lord had not claimed the case in the proper way by writ. In both cases the claim was taken seriously, and hence indicates that the principle of article 24 was not dead, even at the end of the thirteenth century.[28]

The provisions relating to the holding of common pleas and petty assizes seem to have been particularly popular. Article 11 provided simply: *Common pleas shall not follow our court, but shall be held in some fixed place.* This was not an innovation in 1215, but was intended to ensure the observance of a practice already recognized. In cases where the crown was not involved, those seeking justice were relieved of the expense and delay of following the king hither and thither about the country in search of it—no small boon, as earlier practice reveals.[29] The distinction between the bench and the court *coram rege* becomes well defined in 1234 when the two courts

[25] "Writs *praecipe* might be freely used for any other purpose, but not for this. This one purpose, however, was exactly what had specially recommended them to King Henry [II]. The present chapter must, therefore, be regarded as one of the most reactionary in the Charter: the barons had forced John to promise a complete reversal of the deliberate policy of his father. Here, then, under the guise of a small change in legal procedure was concealed a notable triumph of feudalism over the centralizing power of the monarchy—a backward step, which, if given full effect to, might have ushered in a second era of feudal turbulence such as had disgraced the reign of Stephen." McKechnie, *op. cit.,* p. 350.

[26] *Ibid.,* p. 353.

[27] *Bracton's Note Book* 3:228-29; McKechnie, *op. cit.,* p. 354.

[28] *Y. B. 20-21 Ed. I,* p. 72; *30-31 Ed. I,* pp. 232-34.

[29] McKechnie, *op. cit.,* p. 262. For description of the famous case of Richard Anesty in the time of Henry II; *see also* pp. 262-63.

adopt separate rolls.[30] While the rule of article 11 was recognized and fairly well observed in the thirteenth century, the court *coram rege* and the exchequer court, encroached more or less on the jurisdiction of the common bench. There were means of evasion or interpretation which might bring pleas professedly "common," before the king, and thus create occasion for appeal to the Great Charter.

A petition of the Archbishop of Canterbury and his clergy in 1285 complains that ecclesiastical judges are obliged to appear *coram rege* in certain cases instead of before justices of the bench or itinerant justices, contrary to custom, "since according to the great charter pleas of this kind ought to be held in fixed places and not to follow the court of the king."[31] Since the "fixed place" for common pleas had come to be Westminster, it was no doubt a matter of especial convenience to the Canterbury clergy to have this rule maintained. In 1298 a litigant was ordered to take his case before the justices of common pleas, "since common pleas according to the great charter of the liberties of England ought not to follow the King's bench."[32] The practice of private creditors in seeking the summary procedure of the Exchequer Court was prohibited by article 4 of the *Articuli super cartas* as contrary to Magna Carta.[33]

As illustrated by the following cases, however, appeals to article 11 might be disallowed on the grounds that the plea concerned the king, or that some unusual feature justified deference to royal judgment. In 1237 Gilbert Marshall was summoned to warrant certain manors, some of which the king claimed as escheats. The earl urged that "that plea ought not to follow the Lord King, since common pleas . . . ought to be held in a certain place, and it was contrary to the charter of liberties that they follow."[34] His objection was ruled out on the grounds that this *common* plea was not a *private* plea; it especially concerned the king,[35] and so must be tried before him. The year before, the Earl of Chester also failed to profit by his appeal to article 11. He was accused of having cheated four heirs of the former Earl of Chester of their rightful heritage. In an evident attempt to delay the course of justice as long as possible, the earl tried three times to stop proceedings. His first two objections overruled,[36] finally, as a last

[30] McKechnie, *op. cit.*, p. 267.

[31] Wilkins, *Concilia* 2:118.

[32] *Placitorum Abbreviatio*, p. 239.

[33] Bémont, *op. cit.*, p. 104. Several attempts had been made before this time to keep common pleas out of the exchequer, but neither the writs of 56 Hen. III and 5 Ed. I and the statute of Rhuddlan, nor this prohibition of the *Articuli* effectively stopped the practice.

[34] Case 1220. *Bracton's Note Book* 3:232-33.

[35] *Specialiter tangit personam Dom. Regis.*

[36] He had protested first, that he would answer only to the award of his peers summoned in his own territories where the king's writs did not run; and second, that one of the heirs was not present.

resort, "the earl came and said that it did not seem to him that he ought to answer before the king since that plea is common, and this is manifestly against the liberties granted and against the charter of the Lord King, that common pleas follow the Lord King, and that any persons be summoned before the king for common pleas and to an unfixed place."[37] His protest was ruled out because he had not made it in the first place; and because, even though common pleas be prohibited from following the king, "it does not follow on this account that uncommon pleas may not follow the king and ask judgment."[38]

The transfer of difficult cases to the king was not specified in the Charter, and popular inclination tended to follow strictly the letter of article 11. Nevertheless, the practice upheld by the judges was really only what had been intended by Henry II in establishing the bench in 1178, if we accept the account of the chronicler.[39] The interpretation of the judges was formally stated in connection with an appeal to article 11 in 1290. The defendant had protested against answering to the justices *coram rege* in a common plea, on the grounds that it was contrary to Magna Carta, and had asked that his case be referred to the common bench. His objection was ruled out on the grounds that it had not been made earlier. The justices then went on to cite precedents proving that they had power to try such a plea, especially when it was incidental to a major plea *coram rege,* and "since the Lord King who is the highest judge can do this without offense to the law." Common pleas ought not to begin before the king, they said, but such pleas begun before his justices, and referred to the king because of difficulty, necessity, or by royal command, whether before judgment or after, "it is right that all things be drawn to him without which the aforesaid pleas cannot be terminated."[40]

In three instances of reference to article 12, providing for the taking of the petty assizes in their own county, the terms of the Charter were upheld. In the case of 1221 the defendant claimed that an assize of novel disseisin must be taken within the county court because "the Lord King through his charter granted that this kind of assize be taken in the county courts and not outside."[41] Since the plaintiff "could not gainsay this," the

[37] Case 1213, *Bracton's Note Book* 3:226-27.

[38] *Quamvis communia placita prohibeantur quod non sequantur Dom. Regem, non sequitur propter hoc quin aliqua placita singularia sequantur ipsum Dom. Regem. et petunt iudicium.*

[39] *Et statuit quod illi quinque audirent omnes clamores regni, et rectum facerent, et quod a curia regis non recederent, sed ibi audiendum clamores hominum remanerent; ita ut si aliqua quaestio inter eos veniret, quae per eos ad finem duci non posset, auditui regio praesentaretur, et sicut ei et sapientoribus regni placeret terminaretur. Bened. Abb.* in *Select Charters,* p. 155.

[40] *Placitorum Abbreviatio,* p. 283.

[41] Case 1478, *Bracton's Note Book* 3:408-9. As this case occurs in 1221, it relates, of course, to article 13 of the 1217 text.

case was referred to the county court. In a novel disseisin, 1290, twelve recognitors came and gave certain preliminary information, but when they were asked "whether the aforesaid Robert and others had disseised the aforesaid abbot of the aforesaid tenement or not," they protested that they were outside the limits of their county, and that no *recognitio* of this kind ought to be taken outside the county, "as it is contained in the Great Charter of liberties granted to the kingdom of England."[42] Given a day in their own county, they stated readily enough that the said Robert and others had not disseised the abbot. This same year, judges in Surrey annulled a previous decision and restored to a man and his wife possession of their land because the record of the case revealed three errors. The first lay in the taking of the assize of novel disseisin, which concerned property in Surrey, before Thomas Weyland and his associate justices of the bench at Westminster in Middlesex: "And thus there is an error in the beginning of the proceedings inasmuch as this is against the form of Magna Carta in which it is contained that any assize ought to be arraigned and taken in its own county."[43]

The procedure set down in article 13 for taking the assize of darrein presentment *coram justiciariis de banco* was recognized in letters patent of 1272 and 1279: special justices were appointed to take the assize in three specific cases, "because as pleas are now ceased to the Bench, assizes of darrein presentment cannot be taken there according to the Magna Carta whereby the patron of the said church which has now been void sometime is likely to lose his advowson by lapse."[44]

"Very likely there was no clause in Magna Carta more grateful to the mass of the people than that about amercements."[45] A proper observance of article 14 should have afforded protection against exorbitant amercements imposed by sheriffs, itinerant justices, and other officials, more intent on filling the royal treasury or their own pockets, than in imposing punishment. But that extortion incident to royal justice did not cease with 1215, is amply demonstrated by the complaints of the chroniclers. There is some slight evidence that individuals actually benefited by the restrictions of the Charter. A writ to the sheriff of Northampton, 1253, commands him to see to it that neither a certain Payne nor his bailiffs distrain John le Franceys (?) "for any amercement contrary to the tenor of the great charter of liberties . . . ."[46] About this time the monastery of St. Albans secured

[42] *Placitorum Abbreviatio*, pp. 153-54.

[43] *Ibid.*, p. 282.

[44] *C. P. R.*, 1266-72, pp. 695-96 (1272); and similar cases, *ibid.*, p. 694; and 1272-81, p. 324 (1279).

[45] Maitland, *Pleas of the Crown for the County of Gloucester*, p. xxxiv.

[46] *C. R.* 66, m. 7 d.

the revocation of an unjust judgment which had resulted in an amercement of a hundred pounds against the town and liberty of St. Albans. The record of this transaction explains: "fifthly, they had injured the liberty against the common charter, where it is said that free men should be amerced according to their offenses, and their reputation saved, and the amercement of a hundred pounds, as is manifest to everybody, exceeded the just penalty of the offence, as appears from the above mentioned reasons. In fine, not only an injury has been committed by the justiciaries against the aforesaid liberty, but also by all those who approve of the deed, who appear to have fallen under the sentence pronounced on those presuming to violate the common charter."[47] In the famous trial of the judges in Edward's reign, one of the charges brought against Chief Justice Ralph de Hengham and his associates relates to an illegal amercement. A chaplain, William Bardwell, the plaintiff, had been amerced a hundred shillings for a false claim. The amount had been determined by the justices, not by a jury: *non per iuratam, contra formam magne carte domini Regis.*[48]

Regulation of distraint for debt according to article 8 of the Charter was sanctioned by the king in a private grant of 1272 to the abbot of Seleby for himself and his monks and the men of his "liberty": "that they shall not be distrained contrary to the form of Magna Carta for any debt whereof they are not pledges or principal debtors."[49] Was this order simply intended to restrain royal officials who had disregarded the law, or had the Abbot petitioned, and perhaps paid for the enjoyment of this privilege, already amply confirmed and "redeemed" together with all the other liberties of the Charter? The bishops, holding lay fiefs, included violation of article 18 in their grievances of 1257; "When any one, holding a lay fief from the king, dies, the bailiffs of the king seize all the goods of the deceased, and do not suffer the testamentary executors to dispose of them, until an inquest has been made by the exchequer, to ascertain whether the deceased owes anything to the king. Whereas this is in opposition to right and contrary to the charter, by which it is declared, that the bailiffs have a right to do so, only when they show the king's letters patent relating to the demand of such debt, and then even, they may [only] attach some of the chattels to liquidate such debt assessed by true men, until such debt be paid by means of the other chattels, the free administration being, otherwise, entirely left in the hands of the executors."[50] This passage is characteristic of the exact knowledge which the clergy possessed of any documents or charters conceived in their interest, the Great Charter included.

[47] Matt. Par. t., 3:444.
[48] *State Trials of Edward I*, p. 50.
[49] *C. P. R.*, 1266-72, p. 630.
[50] Matt. Par. t., 3:486-87.

Article 34 was upheld in Bedford county court in 1276. "Cecily, wife of Hugh of Holiot, came and prosecuted her appeal against Godfrey Steadman. The said Godfrey, who had been mainprised [at the last county court] was now exacted for the fifth time and he did not appear. But a writ of the lord king was sent to the sheriff ordering him to see that all enactments of the Great Charter be observed, and the Charter enacts that no person should be arrested on the plea of a woman save for the death of her husband, but Cecily's appeal is for the death of Robert, her brother. Hence by judgment of the county outlawry was not proclaimed against Godfrey; nevertheless, a day was given to Cecily to appear before the justices."[51] This case is interesting, as one of the few illustrations of practical local results of a confirmation and order for observance of the Charter. In a similar case three years later, the accused man was quit of the appeal made by the sister of a victim of homicide, as a result of his claim based on Magna Carta.[52] The same article is cited by justices in Derby (1290), but the occasion for it is not recorded.[53]

The time and manner of holding the county court, sheriff's tourn, and view of frankpledge were specified in the revision of 1217 (article 42) and repeated in 1225 (article 35). The county court was to meet not more than once a month; no sheriff or bailiff was to make his tourn through the hundreds more than twice a year or in other than the accustomed place; view of frankpledge was limited to once a year and the sheriff was not to "seek occasions," but to be content with what sheriffs were accustomed to have from their view in the time of Henry II; local customs dating from the time of Henry II or later were to be respected. These regulations were of greater interest to the thirteenth century Englishman than some of the more famous articles of the Great Charter, for they were directed against the abuses of the sheriffs. John's Charter had provided that "all counties, hundreds, wapentakes, and trithings (except our demesne manors) shall remain at the old rents without any additional payment." Since the rents of the demesne manors were excepted, the aim of the provision was evidently to prevent an increase in the other source of revenue which made up the ferm—the profits of the local courts.[54] A different method of control was adopted in 1217. Since it was the practice of sheriffs to summon the various local courts with undue frequency and at inconvenient and unusual times

[51] *Coroners Rolls*, 1265-1413, p. 35. The order received by the sheriff was probably in connection with a confirmation of the charters, 1276; see Appendix C.

[52] *Three Early Assize Rolls*, p. 365.

[53] *Non competit mulieri appellum pro morte filii sui nisi pro morte viri sui prout in magna Carta apparet. Placitorum Abbreviatio*, p. 283.

[54] McKechnie, *op. cit.*, p. 320.

and places, and then to amerce suitors who failed to attend, proper regulation of the meeting of the courts afforded relief from the twofold burden of unwelcome frequent suit of court and excessive amercements. Abuses did not cease with this regulation of 1217. In the reign of Henry III, the courts continued to be a favorite source for securing additional revenue. The holding of two acres in a county was sometimes considered sufficient ground for summoning the holder to county court and fining him for non-attendance; persons might even be summoned to several places at once and penalized for failure to appear.[55] The suitor had to neglect his own affairs to undertake a difficult, and perhaps dangerous, journey along the notoriously poor highways of medieval England. He received not even the modest fee allotted to the modern juryman, and was lucky if he escaped a fine for not discharging his duties to the satisfaction of the royal officials. He might also be subject to attendance at forest courts, and if he was a tenant-in-chief, to answer the royal summons to a great council. It has been suggested that the functions entrusted to knights and other "lawful men" during this early period afforded considerable training in self-government, and form the basis for the success of later representative institutions, but it was training in a hard school; the thirteenth century Englishman heartily detested the duties thrust upon him, and escaped them whenever he could. The Close Rolls contain a number of grants to individuals of the much coveted exemptions from being impanelled in assizes, juries or recognitions, serving as coroners, verderers, foresters, owing suit of court.[56] The records of the time reveal the constant struggle of the government to strike a balance between the demands of plaintiffs for speedy justice and the complaints of the "good and lawful men" who were imposed upon to secure it.[57]

It was only natural then, that the regulations of article 35 should have been prized, and attempts made to secure its observance. Just such an attempt was made in 1226. A certain Theobald and Hugh, together with the sheriff of Lincoln and four knights, were summoned to testify before the king in regard to disturbances in their county. The sheriff accused Theobald and Hugh of hindering him from holding his county court and tourns. The two men on their part claimed that their interference was justified: the sheriff was holding court oftener than once in forty days and more than

[55] Prothero, *Simon de Montfort*, p. 162.

[56] *C. R.*, 1237-42, pp. 428, 429-30, 432-37; *C. P. R.*, 1247-58, pp. 4, 6, 55, 74, 140, 635; *Royal Letters* 1:342; *et al.*

[57] Note, for instance, article 8 of the *Provisions of Westminster:* "Concerning charters of exemption and privilege, that the purchasers shall not be empanelled in assizes, juries, or recognitions, it is provided, that if their oath should be so necessary, that without it justice could not be administered, as in the great assize and perambulations, and where they may have been named as witnesses in charters, or writings of covenants, or in attaints or other like cases, they shall be compelled to swear; saving unto them at another time their aforesaid privilege and exemption." Adams and Stephens, p. 65.

one day at a time as was the custom in Lincoln, and he was holding his tourn in Ancaster more than twice a year, contrary to the charter of liberties. The testimony of the four knights gives an unusually complete and lively picture of what had happened. The sheriff had held court from morning until evening. As several cases were unconcluded, he had told the parties concerned to return next morning, and had ordered the suitors to appear again on the morrow to give judgments. When the time arrived, these unwilling suitors all went off home, protesting that the session was for one day only. All that the sheriff could do was to promise disappointed litigants that their cases would be heard elsewhere during his tourn; and thus "seven score cases stood over."

It was when the sheriff attempted to fulfil this promise at Ancaster that Theobald and Hugh had appeared on the scene. When the sheriff asked for judgments, Theobald protested that none should be made there. He had just come from the king's court where he had talked with the Archbishop and the Earl of Chester and other magnates, and he was certain that within three weeks they would have a writ from the king prohibiting any further vexations of this kind, and he added, "he'd like to hear anyone give judgments in that court." The sheriff, insisting that justice must be done, especially for the poor, again asked judgments. When the suitors withdrew to talk matters over, Theobold and Hugh saw their chance. They explained that the sheriff's action was "contrary to the liberty which they ought to have by the king's charter." The two agitators were promptly made official spokesmen for the group. Theobald informed the sheriff with many ugly words *(plura turpia verba)* that no judgments would be made. Hugh challenged him to show warrant for his proceedings. The sheriff retorted that he thought his being a sheriff and bailiff of the king was sufficient warrant, and was sure that the king would approve of what he had done. A steward of John Marshall, anxious either to support the sheriff, or to expedite justice, then challenged Hugh in his turn to show warrant for his interference and proceeded to pronounce a judgment. He was met with scornful cries and the threat, "We will see your lord shortly and tell him how you behave yourself in court."

This testimony of the four knights concluded, Theobald and Hugh stoutly defended their actions before the king, again finding justification in an appeal to the Great Charter.[58] They then withdrew *sine die*, to await further summons.

[58] *Comitatus Lincolnie semper solet sedere de xl diebus in xl dies, et Dom. Rex concessit omnibus hominibus de regno suo libertates suas et antiquas consuetudines suas usitatas, et consuetudo semper talis fuit, et iste uicecomes contra illam consuetudinem assedit aliquando comitatum infra quinque septimanas et aliquando per minus tempus, et praeterea comitatus numquam solet sedere nisi per unum diem tantum. Et quia habuerunt predictas libertates per Dom. Regem, uidebatur eis quod non potuerunt nec debuerunt sine Dom. Rege et magnatibus regni mutare statum comitatus.* . . . Case 1730, *Bracton's Note Book* 3:565-68.

Their case may have been the cause of summons to the sheriffs and knights of Lincoln and other counties in 1226 and 1227.[59] If so, the matter was not satisfactorily settled at that time. In 1231 juries testified that since the making of the Charter sheriffs had come twice (instead of once) a year into a certain hundred for view of frankpledge and attachments of pleas of the crown.[60] Three years later article 35 was practically amplified by the king's council.[61] The provisions of Westminster, 1259, provided that "the turns shall be holden according to the form of the king's Great Charter, and as they were wont to be holden in the time of king John and king Richard."[62] This article was embodied in the Statute of Marlborough, 1267, together with special privileges of non-attendance granted archbishops, bishops, abbots, priors, earls, barons, "religious men," and women: they were not to be obliged to attend unless their presence was especially required; "and they that have [Hundreds of their own to be kept] shall not be bound to appear at any such Turns, but in the Bailiwicks where they be dwelling."[63] Two years later, the people of Northumberland appealed to the Charter against the practice of their sheriff, William H., who had been making his tourn twice a year, summoning all freeholders to the county to attend, and amercing absentees heavily, contrary to local custom. At the king's command an inquisition was held; juries summoned from the neighboring counties of Cumberland and York upheld the men of Northumberland in their claim that these practices were not customary in their county before the said William's time, and that the latter had no warrant from the king for his actions.[64]

These instances all relate to specific provisions of the Great Charter. In a novel case of 1237, appeal was made to the document on the grounds of what it *did not* contain. A question had arisen in regard to partitioning the county of Chester among the heirs of the Earl; should the property be divided so that all the heirs would hold separately of the king, or should the eldest coparcener alone be earl and tenant-in-chief, the others holding of him? The king asked judgment on this point and also requested that one part be allotted to him. When these questions were posed at London before archbishops, bishops, and magnates of England in the king's council, "all said that they never saw such a case, nor was it proven nor did they know that anything about a case of this sort was contained in the charter

[59] See *infra*, pp. 59-60.

[60] Case 513, *Bracton's Note Book* 3:400-402.

[61] See *infra*, pp. 60-61.

[62] Adams and Stephens, p. 65.

[63] *Statutes of the Realm* 1:22.

[64] *Three Early Assize Rolls*, pp. 163-64. Here the appeal was not to the special terms of article 35, which permitted two tourns a year as a rule, but to the clauses promising to respect local customs which varied from county to county.

of liberties; they did not want to judge by examples in use on the continent, neither had they seen any such case in civil law."[65] In this instance a much greater comprehensiveness was attributed to the Great Charter than it actually possessed; as an embodiment of *English* law and custom it was most acceptable to the magnates, who had declared just the year before that they did not want to change the laws of England!

In connection with appeals to individual provisions of Magna Carta one article introduced in 1225 deserves particular attention. This is the clause of article 37 which promises to archbishops, bishops, abbots, priors, Templars, Hospitallers, earls, barons, and all others, all the liberties and free customs which they formerly had.[66] It is this, rather than the other more specific articles of the Charter which might justify Professor Pollard's conception of the narrow and selfish character of its provisions: "Medieval liberties were large but their recipients were few. They were the exceptions to the rule; it was because they were rare privileges and not common rights that the framers of Magna Carta set so much store upon liberties."[67] More "reactionary" even than article 24, because of its comprehensiveness, this provision guaranteed all those local particular and personal "liberties," both feudal and ecclesiastical, which were so inimical to general or common rights on the one hand, and to the growth of the centralized monarchy on the other. Its very vagueness probably did much to nullify its effect in the long run. Nevertheless, its presence in the Charter may serve to explain appeals to Magna Carta in instances where the basis of the appeal is not clear, where the document contains no specific remedy for the particular grievance of the moment. Such a blanket guarantee might have been taken to cover any transgressions of the king and his officials which introduced innovations or encroached on customary liberties. It might have been cited against military service overseas, and in fact against infringement of any and all individual and class privileges which could be claimed by prescription or private charter.

The sources examined have revealed only one definite instance of appeal to this provision. In 1220, shortly after the granting of the Great Charter to Ireland, Henry, archbishop of Dublin, writes to the king that the latter's keeper of the forest has infringed on the immunities of his church. The archbishop urges his case against the forester on the grounds of his own

[65] Case 1227, *Bracton's Note Book* 3:242-43. . . . *omnes dixerunt quod nunquam uiderunt talem casum, nec constabat eis, nec sciuerunt si aliquid contineretur in carta libertatum de huiusmodi casu, nec voluerunt iudicare per exempla usitata in partibus transmarinis, nec in iure scripto* [Roman Law] *aliquam talem casum uiderunt.*

[66] *Et salve sint archiepiscopis, episcopis, abbatibus, prioribus, templariis, hospitalariis, comitibus, baronibus, et omnibus aliis tam ecclesiasticis quam secularibus personis libertates et libere consuetudines quas prius habuerunt.*

[67] Pollard, *Evolution of Parliament*, p. 171.

private charters from John granting these immunities, and "through your charter recently sent to Ireland in which you have granted and confirmed not only to churches and ecclesiastical men but to all laymen and worldly persons old rights and accustomed liberties."[68] The *Mirror of Justices* interprets the last article (this clause?) to mean recognition of seigniorial justice: "The last article has this force and meaning: that as the king has the cognizance of trespasses done in his fees, so also all fee tenants may have their courts and the cognizance of trespasses done in their fees, in all actions, whether real, personal, or mixed."[69] The complaints of the barons in 1297 are reminiscent of this provision, especially as these complaints are worded in the *articuli quos comites petierunt nomine communitatis* and the *statutum de tallagio non concedendo*.[70] This general guarantee of article 37 was referred to by the king in writs of 1225 intended to secure the observance of his own "liberties," concerning which "special mention is not made in the aforesaid charters."[71] In a writ of 1253 to the sheriff of Dorset, the king again refers to his own liberties in connection with those of his barons: he commands observance of the Great Charter, saving his own rights and dignities and the liberties and free customs of the barons, not mentioned in that document.[72] Whether or not kings apppreciated the fact, the Charter, in defining feudal law, and especially in regulating royal courts and procedure, gave definite sanction to important royal "liberties." Historians who have adopted exclusively the popular national, or the narrow feudal, conception of the document have overlooked this fact. In those articles which regulated and preserved the best features of royal justice the Charter carried the remedy for its own weaknesses. These provisions were popular and deservedly so, as indicated by the appeals to them described above.

[68] *Per cartam vestram ad partes Hiberniae nuper transmissam in qua non solum ecclesiis et ecclesiasticis viris sed omnibus saecularibus et mundanis antiquas debitas et consuetas libertates concessistis et confirmastis. Royal Letters* 1:87.

[69] *Mirror of Justices*, p. 182. (Cf., however, the editor's comment, which interprets this statement as applying to that clause of article 31 which grants to subtenants all the liberties granted the barons.)

[70] The *articuli quos comites petierunt nomine communitatis*, article 3 reads as follows: *Preter hec, tota communitas terre sentit se valde gravatam quia non tractatur secundum leges et consuetudines terre, secundum quas tractari antecessores sui solebant, nec habent libertates quas solebant habere, sed voluntarie excluduntur.* Bémont, *op. cit.*, pp. 77-78.

The more formal petition or draft (known as the *statutum de tallagio non concedendo*) article 4, provides: *Volumus eciam et concedimus pro nobis et heredibus nostris quod omnes clerici et layci de regno nostro habeant omnes leges, libertates, et liberas consuetudines suas, ita libere et integre sicut eas aliquo tempore plenius et melius habere consueverunt; . . . Ibid.*, pp. 88-89.

[71] The particular royal "liberty" which the king was concerned about at this time was the right of his officials in local courts. The writ, addressed to archbishops, bishops, abbots, priors, earls, barons, knights, free tenants, and all others of the county of York, begins: *Cum probis hominibus nostris de regno nostro libertates concesserimus per cartas nostras in quibus continetur quod nihilominus salve sint omnibus libertates et libere consuetudines quas prius habuerunt, libertates nostras de quibus maxime specialis mencio in cartis praedictis non est facta nobis volumus inviolabiliter observari . . . . Rot. Litt. Claus.* 2:79. For somewhat similar writs of June 30 to the sheriff of Chester, and Aug. 8 to sheriffs of Cumberland and York, see *ibid.*, 2:48-49, 78.

[72] *Salvis nobis et heredibus nostris juribus et dignitatibus corone nostre et baronibus nostris et magnatibus ac aliis nobis subiectis libertatibus et liberis consuetudinibus prius usitatis non expressis vel concessis in carta praedicta. C. R.* 66, m. 9, d.

The clause of article 37 providing that tenants of the king must observe toward their own tenants the liberties granted them by their suzerain the king, was naturally not of especial interest to the great barons.[73] They had no desire to stress their obligations toward their dependents, but it would be interesting to know whether these subtenants ever profited by appeal to this provision. It will be noted below how the principle was made applicable to a new measure in 1234. Other references have been found, but only such as appear in royal orders. Were these issued in answer to the appeals of subtenants, or did the king take the initiative? One cannot but feel that Henry III derived considerable satisfaction from forcing his tenants-in-chief to observe toward their men the regulations to which they were holding him. In 1254 he based his promise to command proper observance of the Charter on this condition: "provided that the said magnates and prelates cause it in like manner henceforth to be observed by their own subjects."[73a] Matthew Paris quotes Henry as saying frequently: "Why do not these bishops and nobles of my kingdom observe towards those subject to them, this charter about which they make such outcry and complaint?"[74] On one occasion, at least, however, the right of subtenants to share in the liberties was emphasized in writs to the sheriffs of several, perhaps all counties.[75] Among the appeals to specific provisions cited above, are some by subtenants.

Repetition and Amplification in Later Statutes; Observance in the Courts; Legal Treatises

The vitality of many provisions of the Charter is evident from repetition or amplification in later statutes. Professor McKechnie indicates such later legislation in respect to at least thirteen articles.[76] In some cases the Charter

[73] *Omnes autem istas consuetudines predictas et libertates quas concessimus in regno nostro tenendas quantum ad nos pertinet erga nostros, omnes de regno tam clerici quam laici observent quantum ad se pertinet erga suos.*

[73a] *C. P. R.* 1247-58, p. 281.

[74] Matt. Part. t., 3:125.

[75] *Volumus quod omnes tam archiespscopi et episcopi, quam comites, barones, et alii magnates nostri, easdem libertates et liberas consuetudines teneant hominibus suis tenentibus de eis sicut voluerint quod nos eis easdem teneamus desicut hos concesserunt . . . per totos comitatus tuos et per totam balliam tuam clamari facias, quod libertates illas teneantur, tam a te et ballivis nostris, quam a magnatibus et ballivis suis . . .* ; Writ to the sheriff of Somerset and Dorset; similar writs were sent to eight other specified counties, *et aliis vicecomitibus. Royal Letters* 1:455-56.

[76] Article 4, repeated in Statute of West.; additions Statute of Gloucester, and Ed. III c. 13.
Article 5, additions, Marlborough c. 16, West. I c. 48, 14 Ed. III, Statute of Merton.
Article 6, additions asked in Petition of the Barons, 1258.
Article 8, additions, 51 Hen. III, and *Articuli super cartas.*
Article 11, amplification in writs, Statute of Rhuddlan, and *Articuli super cartas.*

is specifically mentioned; in others not. Occasionally where no reference to the Charter occurs, the language used parallels very closely that of the earlier document.[77] Magnates, counsellors, officials, and lawyers concerned in the statute-making of Edward's reign must have been conscious of the relation of this later legislation to Magna Carta. As most of the cases to be indicated below[78] relate to provisions which benefited barons, clergy, or other classes—not the crown—it is possible that the enactment came in answer to petition, and perhaps appeal to the Great Charter.

The provisions of Oxford were not concerned with defining and emphasizing parts of the unwritten law as was Magna Carta. The Great Charter was confirmed in a single clause;[79] any needed affirmations of, or additions to, its contents were left for the Provisions of Westminster, 1259. The document of 1258 dealt exclusively with the machinery of government, the character and powers of officials. Article 45 of John's Charter[80] had been omitted from all revisions; new provision must be made concerning justices, constables, sheriffs, and bailiffs. The provision of the Great Charter as to escheators, however, was retained in the text of 1225 as article 31, and so served as a basis in the provisions of Oxford for the section *Of the escheators:* "Let good escheators be appointed; and that they take nothing of the effects of the dead, or of such lands as ought to be in the king's hand. Also that the escheators have free administration of the goods until they shall have done the king's will, if the estate owe him his debts. And that according to the form of the Charter of liberty. And that inquiry be made into the wrongs done which the escheators have done there aforetime, and amend-

Article 12, modified, Statute of West. II c. 30.
Article 19, additions, West. I, *Articuli super cartas.*
Article 21, special punishment for violation, 3 Ed. I c. 32.
Article 26, elaborated, statutes West. I, Gloucester, West. II.
Article 27, elaborated, Provisions of West., c. 12.
See McKechnie, *op. cit.*, commentary on corresponding articles of John's Charter, i.e., articles 4, 5, 6, 9, 17, 18, 28, 30, 36, 37.
McKechnie also indicates that certain articles of John's Charter, omitted from all revisions, were partly reënacted later: article 10 in the Statute of Merton; article 11 in the Statute of Jewry, and article 15 in West. I. *Ibid.*, pp. 224-25, 231, 259.

[77] Cf. for instance, article 14, with c. 6 of the Statute of West. I: "And that no city, borough nor town, nor any man be amerced, without reasonable cause, and according to the quantity of his trespass; that is to say, every freeman saving his freehold [contenance] a merchant saving his merchandise, a villain saving his waynage, and that by his or their peers." *Statutes of the Realm* 1:28.

[78] There are noted here in detail only those instances in which the Charter is actually mentioned.

[79] *La Chartre de franchise seit garde fermement.*

[80] "We will appoint as justices, constables, sheriffs or bailiffs only such as know the law of the realm and mean to observe it well."

ment be made of such and such.[81] Nor let them take talliage or anything else, except as it ought to be according to the charter of liberty."

Protection against abuses of wardship as provided in articles 2, 4, and 5 of Magna Carta were repeated and amplified in 1266-67, 1275, and 1279. The *Dictum of Kenilworth* provided that: "the custodies which are due to the King shall remain to them to whom they were given by the King, and when the Heirs shall come to lawful age, they shall ransom at the same terms as other did, and no Waste must be done by them that have the Custody; and if there be, justice shall be done against them, according as is contained in Magna Carta."[82] The Statute of Westminster I, c. xxi, partially repeats the substance of article 4 of Magna Carta, and concludes, "and that of such manner of wards shall be done in all points, as is contained in the Great Charter of Liberties made in the time of King Henry, father to the King that now is, and that it be so used from henceforth; and in the same manner shall Archbishopricks, Bishopricks, Abbacies, Churches, and all Spiritual Dignities be kept in time of Vacation."[83] The Statute of Gloucester, c. v., provides that a man may secure a writ of waste in Chancery against those guilty of waste holding "by the law of England, for Term of Life, or otherwise for Term of Years, or a Woman in Dower," and specifies threefold recompense as penalty. "And for Waste made in the time of Wardship it shall be done as is contained in the Great Charter. And where it is contained in the Great Charter, that he which did Waste during the Custody shall leese the Wardship, It is agreed that he shall recompense the Heir his Damages for the Waste, if so be that the Wardship lost do not amount to the Value of the damages before the Age of the Heir of the same Wardship."[84]

Article 26 of the Charter is upheld in the Statute of Westminster II, c. 29, which provides against granting a writ of trespass before any but

[81] The translation follows that of Stubbs, *Select Charters*, p. 386, to this point. These authorities translate the last clause—*ne taálage ne autre chose ne prenge fors si come il devera solum la chartre de franchise*—as follows: "nor let talliage or anything else be taken except . . . etc." This translation makes the French *taliage* equivalent to the Latin *tallagium* with its technical meaning of a regular levy on the demesne towns assessed by royal officials, fined for or paid as a per capita tax. It seems more likely that *taliage* was used either in the general French sense of any contribution or tax, and that this term together with the *autre chose* referred to the relief and other dues and services taken by the escheator in behalf of the king, or that it referred to the tallaging by the escheator for the king of towns on the escheated lands, now become king's towns. No issue of the Great Charter contained any reference to tallage; the Provisions of Oxford are entirely concerned with government and officials, all its other chapters are carefully organized, dealing with only the one subject stated in the heading. It seems improbable that the subject of tallage in general should have been introduced here, except as it related to the escheators. According to the Charter, no income of any kind from an escheated estate must exceed what the former lord would have received: the royal escheators had tried to exact what a tenant-in-chief of the king would have given.

[82] *Statutes of the Realm* 1:15.

[83] *Ibid.*, 1:32. This last clause is a virtual repetition of the last sentence of article 5.

[84] *Ibid.*, 1:48. A special statute of Waste was enacted later. *Ibid.*, pp. 109-10.

justices of either bench and itinerant justices, except in special cases. "And from henceforth a Writ to hear and determine Appeals before Justices assigned shall not be granted but in a special Case, and for a Cause certain, when the King commandeth. But lest the Parties appealed or indicted be kept long in Prison, they shall have a Writ of Odio et Atia, like as it is declared in Magna Charta and other Statutes."[85]

As already indicated, the holding of the sheriff's tourn, as specified in article 35, is embodied in the Provisions of Westminster and the Statute of Marlborough. The rights of the cinque ports (article 9) and the holding of common pleas in a fixed place (article 11) are referred to in the *Articuli super cartas* of 1300. The provision of article 6 for marriage of heirs without disparagement is repeated in the Statute of Wards and Reliefs.[86]

Thus in the provisions of Oxford and Westminster, the Dictum of Kenilworth and the Statute of Marlborough, and in three great statutes of Edward's reign—Westminster I, Gloucester, and Westminster II—and in the *Articuli super cartas*, the Great Charter was specifically mentioned, and one or more of its provisions reaffirmed or elaborated.

Appeals to Magna Carta in pleas of one kind and another, and its perpetuation in later legislation kept the great document alive in the courts. As some of the cases described above indicate, provisions might be evaded, especially in the king's interests, but on the whole, the courts were inclined to follow the law as set down in the Charter, rather strictly. The thirteenth century, and particularly the reign of Edward I, was marked by interesting developments in connection with the royal courts. "As early as the thirteenth century," comments Sir Frederick Pollock, "the judges were the servants of the law first and the king afterwards."[87] The expanding jurisdiction of the royal courts was creating greater uniformity at the expense of diverse local customs, but "the uniformity which they established was not according to the king's pleasure, but according to law, and was far more capable of resisting executive interference than the customs which it superseded."[88] In a formative period when there was much new law, much clarifying and re-definition of old law, judicial interpretation was necessarily extensive: "The law of the thirteenth century was judge-made law in a fuller and more literal sense than the law of any succeeding century has been."[89] The Year Books of Edward's reign show the pleaders

[85] *Ibid.*, 1:85.

[86] *Ibid.*, 1:228. This statute is given among those of uncertain date; it is possibly of 28 Ed. I. "The Ward of Land that is holden in the Knight's service belongeth to the chief Lord, and the marriage, which ought to be without Disparagement as the Great Charter limiteth."

[87] Pollock, *Expansion of the Common Law*, quoted Maitland and Montague, *Sketch of English Legal History*, p. 83.

[88] *Ibid.*, pp. 83-84.

[89] *Ibid.*, p. 86.

already citing and 'distinguishing' previous cases."[90] Interspersed among reports on actual cases are notes on points of law evidently suggested by, or established in connection with, these cases.[91] References to statutes are numerous, and in wording which suggests that the justices were inclined to uphold pretty strictly what these statutes prescribed.[92] At the same time a class of professional English temporal lawyers, as opposed to the decretists and legists, was beginning to be formed.[93] Such men, like the magnates and counsellors of 1237 who "didn't want to judge by practices employed overseas," would know and uphold English common law and statutes to the greater exclusion of Roman law or canon law. Because there was so little in the way of written law before 1215, these lawyers of Edward I's time "thought of Magna Carta as the oldest statute of the realm, the first chapter in the written law of the land, the earliest of those texts, the very words of which are law."[94]

The few legal treatises of the time contain some references to the Charter. The *Glanvill Revised*, written about 1265, contains what seems to be a garbled statement of articles 12 and 13.[95] Bracton's *De Legibus Angliae* comments on the "reasonable relief" of article 2, restriction of the writ *praecipe* of article 24, and the free use of the writ *de vita vel membris* of article 26.[96] The author of the *Mirror of Justices* attempts a sort of complete commentary, article by article. He begins with an emphatic statement of his motives: "Whereas the law of this realm founded upon the forty articles of the Great Charter of Liberties is damnably disregarded by the governors of the law and by subsequent statutes, which are contrary to some of these articles, and the errors of certain statutes, I have put on record this chapter concerning the defects and reprehensions of statutes."[97] He then proceeds to point out certain defects (usually in the nature of too great brevity or incompleteness of statement) in articles 2, 3, 4, 6, 7, 17, and 26; interprets articles 9, 11, 18, 28, 29, 30, 32, 33, and 34, sometimes correctly, sometimes with embellishments of his own devising; and emphasizes the violation of articles 10, 12, 14, 16, 22, 24, 25, 29, and 35, through

[90] Although "we should be assigning far too early a date for our modern ideas, if we supposed that the law of the thirteenth century was already 'case-law,' or that a previous judgment was regarded as 'a binding authority.'" Pollock and Maitland, *History of English Law* 1:183-84.

[91] *Y. B.* 32-33 Ed. I, pp. 186, 460-66; *ibid.*, 33-35 Ed. I, p. 370 *et al.*

[92] In one of these the editor notes a reference to Magna Carta, although the Charter is not named. *Y. B.* 33-35, Ed. I, 150.

[93] Pollock and Maitland, 1:211-18.

[94] Maitland and Montague, *op. cit.*, 77-78. Besides Magna Carta and the Forest Charter, only two other documents of Henry III's reign attained the rank of statute law, the statutes of Merton and Marlborough. *Ibid.*, pp. 79-80.

[95] The Charter is not mentioned. Maitland, *Collected Papers* 2:285.

[96] Bracton, *De Legibus Angliae* 1:666-67; 6:271; 2:283, respectively.

[97] *Mirror of Justices*, pp. 175-83.

the practices of the king's courts and officials, and the tenor of later statutes.[98] In his discussion of the statutes of Merton, Westminster II, and others, he points to provisions repugnant to articles of the Great Charter.[99] He reveals himself as a staunch advocate of the "liberties of the Church," and seigniorial justice; he is conscious of the lack of adequate machinery to enforce the "liberties" and proposes a novel method for doing so.[100] In view of Professor Maitland's masterful exposition of the strange character and uncertain attainments of the author of the "Mirror,"—the ideas drawn at random from Roman law, canon law, English common law, the Scriptures, all incorporated into his treatise with a goodly admixture of imagination,[101] it has seemed hardly worth while to note in detail his criticisms and interpretations. But the whole tone of his commentary is noteworthy for its emphasis on the fundamental character of the law of the Charter, the illegality of laws or practices contrary to it.

This establishment of the Great Charter in the courts and in legal records must have played no small part in its survival. During such times as the Tudor period when the great document was temporarily obscured to popular attention and esteem, it must have lived on in the courts. The legal records of the thirteenth and fourteenth centuries were used by seventeenth century patriots and their successors in re-establishing it and renewing its fame.

Discussion, Interpretation, and Reinterpretation of Provisions of Magna Carta

Although in theory the Charter was considered fundamental and inviolable, and in practice its text was unaltered after 1225, provisions were not only amplified by later legislation, but interpreted, amended, and reinterpreted. The basing of parts of later statutes on provisions of the Charter probably involved discussion or interpretation of the same, but the finished document does not often give evidence of this.[102] There are recorded, however, a few instances of actual deliberation over certain provisions.

In 1226 the king summoned to Lincoln four knights each from eight counties, "to settle contentions arisen between certain of our sheriffs and the men of their counties over certain articles contained in the charter of

[98] With the exception of articles 10 and 22, these are all provisions to which appeals are noted above.

[99] *Ibid.*, pp. 182-83, 194-95, 199-200.

[100] See *infra*, ch. 7.

[101] *Mirror of Justices*, pp. ix-lv.

[102] But cf. statute of Gloucester c. v. ". . . . And where it is contained in the Great Charter, that he which did Waste during the custody shall leese the Wardship, it is agreed that he shall recompense the Heir . . . ." *Statutes of the Realm* 1:48.

liberties granted to them."[103] Owing to the inability of the king to be at Lincoln at the time set, the meeting was postponed until August of the following year.[104] Apparently by this time the question at issue had become general: the sheriffs of thirty-five counties received orders commanding them to send four knights each to Westminster, "for the whole county, to show there the grievance if they have any, against you over the articles contained in the charter of liberties granted them. . . . ."[105] The sheriffs were to present their side of the case. The information given was to be used by the king and his counsellors in settling the dispute. The whole proceeding must have involved more or less discussion and interpretation of the articles in question.[106] It is possible that at least one problem to be discussed at this time was the holding of the county court and sheriff's tourn, as we know that this was a serious issue in Lincoln in 1226, but the orders do not specify. In 1234 several counties received orders commanding strict enforcement of the liberties contained in the Charter; especially that the sheriff's tourn be held only twice a year as provided in the Charter.[107] This order was followed by one to the sheriff of Lincoln containing the following explanation: "Since we have heard that you and your bailiffs as well as the bailiffs of others having hundreds in your county, do not know how the hundred courts and wapentakes ought to be held in your county, since we granted to all of our realm the liberties contained in our charters, we recently had that same charter read in the presence of the lord of Canterbury, and the greater and wiser part of all bishops earls and barons of our whole realm, so that before them and by them this clause contained in our charter of liberties might be expounded." Here the order quotes word for word the clauses of article 35, and explains that many of those present testified that in the time of Henry II, hundreds and wapentakes as well as the courts of lords were held every five weeks. Since the two tourns a year did not suffice "for preserving the peace of the kingdom and correcting the excesses of rich as well as poor," it was provided by the common counsel of the assembled magnates that between the two tourns, hundreds and wapentakes as well as the courts of lords be held every three weeks

[103] *Rot. Litt. Claus* 2:153. The writ does not state what provisions were in question; if the dispute has led to the sheriff's seizing cattle, he is ordered to give surety for them until the matter is settled. The eight counties receiving writs are Gloucester, Northampton, Lincoln, Dorset and Somerset, Bedford and Buckingham, and Westmoreland.

[104] *Ibid.*, 2:154.

[105] *Ibid.*, 2:212-13.

[106] For a discussion and explanation of this episode see White, Some Early Instances of Concentration of Representatives in England. *A. H. R.* 19:735-42.

It is worthy of note, as this article points out, that the Great Charter here occasions the first county representation by popularly elected knights in a central assembly.

[107] Perhaps all counties: *eodem modo mandatum est vicecomitibus Sumersetiae et Dorsetiae Staffordiae et Salopiae, Norffolciae et Suffolciae Canterbrigiae, et Huntindoniae, Surreae, Sussexiae, et aliis vicecomitibus. Royal Letters* 1:455-56.

instead of five.[108] Here there was clearly deliberation by the assembled magnates over a specific provision of the Charter. The article was read before them and interpreted. Testimony was taken as to customs in the time of Henry II. The decision arrived at maintained the original regulation for the semiannual tourns, but provided more frequent meeting of the lesser courts, for the preservation of the peace.

The general clauses of the Charter could be applied to new customs as well as old. In 1234 the provision of article 37, obliging the barons to observe toward their tenants the liberties which they themselves were granted by the king, was applied to an apparently recent regulation for sending substitutes to royal or baronial courts.[109]

Magna Carta was a long document and a specific one for the age in which it was drawn up. Although having a narrow and specific meaning to the men of 1215, many of its articles were brief and general in wording. It was easy and natural for later generations to read into them the practices of their own time. This "flexibility," listed by Professor McKechnie as one of the seven elements in the Charter's greatness,[110] did much to perpetuate the document. It is worthy of note that this process of interpretation began as early as the latter part of the thirteenth century, before many provisions had become obsolete, or the document had become in any way obscure or forgotten. Reinterpretation at first involved only slight changes in meaning, but as time went on it tended in the direction of greater comprehensiveness; a given article was made to mean more things, or to mean something to more people. Some of this early reinterpretation was already laying the foundation for the work of the seventeenth and later centuries.

Interesting examples of this process are cited by Professor McKechnie in connection with articles 16 and 23. Article 16 provided "that no river shall in the future be placed in defence except such as were in defence in the time of King Henry, our grandfather, throughout the same periods as they were wont in his day." This regulation was originally directed against abuses connected with the king's revaying, or the "taking of wild birds in sports by means of hawks and falcons"; it had nothing to do with the protection of fish or fishing monopolies. Not until the reign of Edward I does any law seem to have been passed for the purpose of protecting fish. Not

[108] Here follow details as to the summoning and procedure in these local courts. *Royal Letters* 1:450-52.

When the Great Charter was read in the great hall at Westminster, 1300, the archbishop proposed, *si dicta charta in aliquo articulo defectum pateretur, statim corrigeretur.* Rishanger, *Ann. Angliae et Scotiae,* p. 405.

[109] After reciting the privilege granted *per communem consilium regni nostri,* and noting its extension to any free man owing suit in any court, the writ continues: *precipue cum in carte de libertatibus concessis probis hominibus regni nostri contineatur quod tales libertates quales nos pro nobis et heredibus nostris eis concessimus, tales teneant suis et aliis in curiis et libertatibus suis. C. R.,* 1231-34, p. 551.

[110] *Commemoration Essays,* pp. 16, 18-20.

until Edward's reign was it customary "to describe rivers, over which exclusive rights of fishing had been established by riparian owners, as being *in defenso;* . . . . From Edward's reign onwards, however, rights of fishing steadily became more valuable, while falconry was superseded by other pastimes. Accordingly a new meaning was sought for provisions of Magna Carta, whose original motive had been forgotten. So early as the year 1283 the words of a petition to the King in Parliament show that 'fishing' had been substituted for 'hawking,' in interpreting the prohibition referred to in chapter 47 of John's Charter. The men of York complained that Earl Richard had interfered with their rights of fishing by placing *in defenso* the rivers Ouse and Yore 'against the tenor of Magna Carta.' "[111]

The original intent of article 23 was to prevent obstacles to navigation, not to protect fish or to prevent monopolies of fishing rights.[112] In the petition of the Londoners and merchants noted above, this provision was appealed to on double grounds, "so that vessels laden with victuals and the fish being in the river cannot go through as they were wont." Professor McKechnie notes two later statutes: one of 1350 repeats the substance of article 23 and explains its object solely in relation to navigation; one of 1472 is devised to protect navigation in rivers and " 'also in safeguard of all the fry of fish spawned within the same,' " but "retrospectively and unwarrantably attributes a like double motive to Magna Carta."[113]

Article 29, while retaining its original meaning for the barons,[114] was soon given a wider significance, and made to conform to new institutions. *The Year Book 30-31 Edward I* records the case of a man who objected to the personnel of his jury on the grounds that he was a knight and should be tried by his peers. Consequently a new jury composed of knights was summoned.[115] Once establish the fact that the jury must be peers, it would be natural for later generations, noting such cases, to assume conversely that peers must mean a jury. The author of the *Mirror of Justices* offers an early instance of the possibilities of juggling with this famous article.[116]

[111] McKechnie, *Magna Carta*, p. 304. "This error, which thus dates from 1283, has been accepted for upwards of five hundred years by all commentators on Magna Carta."

[112] *Ibid.*, pp. 343-44. [113] *Ibid.*, pp. 344-45. [114] *Ibid.*, pp. 389-93.

[115] *Y. B. 30-31 Ed. I.*, p 531. Cf. McKechnie's comment, *op. cit.*, p. 393, note 1.

[116] "The article whereby the king grants that he will not disseise, nor imprison, nor destroy any man *nisi per legale iudicium*, renders invalid the statute *de Mercatoribus* and other statutes, and should be thus interpreted: *Nullus capiatur*, none is to be taken unless it be by warrant founded on a personal action. (Here we must distinguish, for if the action is venial, no imprisonment is justifiable save for default of mainpernors, and so it appears, that none can be imprisoned for debt, and if any statute be made repugnant to this article, whether it concern debts due to the king or debts due to others, it is not to be obeyed.) *Nullus utlagetur*—here one must understand 'unless it be for a mortal felony whereof one is found suspected by the oaths of one's neighbors who are sworn *quasi ex officio* in the manner customary in eyres.' And this clause annuls the statute which outlaws a man for arrears on an account, and other similar statutes. *Nullus exuletur aut destruatur*—this is to be interpreted thus: . . . ." etc. *Mirror of Justices*, pp. 179-80.

In the reign of Edward III it was made the basis for a petition against arrest or disseisin simply on petition or suggestion to the king or his counsel by powerful individuals. Procedure must be according to the law of the land, and to this age the law of the land meant the use of the presenting jury.[117]

The second clause of this article: *nulli vendemus, nulli negabimus aut differemus rectum vel justiciam,* is also interpreted by the author of the *Mirror of Justices* in a way probably never intended in 1215: "The article whereby the king grants to his people that he will not sell, nor deny, nor delay justice, is disregarded by the chancellor who sells remedial writs and calls them writs of grace, and by the chancellor of the exchequer who refuses to give acquittances under green wax for payments made to the king, and by all those who delay right judgment or other right."[118] The original intent was to reform certain abuses of John's reign which are not defined, but not to stop the legitimate "sale" of writs, or the customary fees for expediting justice or securing some special coveted procedure. In the reigns of Edward III and Richard II, the Commons attempted to make this article, quoted in each case, the basis for petitions against the sale of writs in Chancery at exorbitant rates, or, as the petitions put it, the charging of a fine in addition to the accustomed set fee.[119] The king's reply usually took the form of vague directions to the chancellor to be "reasonable" or "gracious." As Stubbs points out, these replies all assume that the king has a perfect right to take heavy fees; Richard II defends the right on the grounds of prescription—"our lord the King does not intend to divest himself of so great an advantage, which has been continually in use in chancery as well before as after the making of the said charter, in the time of all his noble progenitors who have been kings of England."[120] Historically the king was correct, but the vague phraseology of the Charter certainly seems to substantiate the interpretation of the popular opposition.

[117] *Item, Come y soit contenu en la Grande Charte des Fraunchises d'Engleterre, 'Qe nul soit pris, ...' q nul desore soit pris p Petition ou Suggestion fait à nostre Seignur le Roi ou à son Conseil, si ne soit p enditement ou présentement des bones & loialx de visnée & en due manere, ou p Proces fait sur Brief Original à la commune Ley. Rot. Parl.* 2:239. This and similar cases are cited, Stubbs, *Constitutional History* 2:637-38.

[118] *Mirror of Justices,* p. 180.

[119] *Item supplient les dites communes que nul fyn soit pris pur briefs de assises, ne pur nulles autres briefs à purchaser, mes ceo que homme paie pur lour brief, come ordene est par la Grande Chartre que Nully negabimus nully vendemus rectum aut justiciam.* This and four similar petitions from the reign of Edward III are quoted: Hardy, *Rotuli Oblatis et Finibus,* pp. xxii-xxiii, note 1. Cf. Stubbs, *op. cit.,* 2:637, where are noted such petitions for 1334, 1352, 1354, 1371, 1376, and 1381.

[120] Stubbs, *op. cit.,* 2:637.

Including all the instances noted above, whether in pleas, letters, or statutes, references to specific provisions of Magna Carta in the reigns of Henry III and Edward I relate to twenty-four of the thirty-seven articles of the Charter.[121] As there are from two to six references to some provisions, the entire number totals fifty-nine. They are drawn from over thirty different years between 1221 and 1306. They are about equally divided between the reigns of Henry III and Edward I. As far as the records give evidence in individual cases, persons or groups appealing to, or in some wise profiting by, these provisions include: the Londoners, men of Dover, merchants, certain men of York, suitors to the county court of Lincoln and other counties, men of Northumberland, a military tenant-in-chief and other tenants, the widow of a tenant holding in fee-farm of the king, the widow of a subtenant, the tenant on escheated estates, Gilbert Marshal, the Earl of Chester, a freeman, a group of recognitors, a chaplain, an abbot with the monks and men of his liberty, the liberty of St. Albans, Archbishop Peckham, the clergy of the diocese of Canterbury, and other groups of clergy. In thirty-two cases the provision of the Charter is upheld. In seven it is definitely denied, although in six of these, rather through some technicality or evasion than by contradiction of the principle involved. Some of the complaints, such as those voiced by the chroniclers, of course, imply that the government continued to violate the provisions concerned. In other cases the wording is vague, or the result not revealed by the brief record.

Evidence of the lasting practical value of Magna Carta, especially in the reign of Henry III, is of primary importance in explaining the early establishment of the Charter in popular estimation. Similar evidence for Edward's reign is almost equally significant for the perpetuation of the document: the vitality of its provisions kept it in evidence while it was being established in the courts, and until the process of reinterpretation was begun; this same vitality was responsible for the important confirmation of 1297, and the practice begun shortly after of having the Charters confirmed at the beginning of each parliament. These references to provisions of the Charter are not numerous in proportion, either to the long period of years, or to the bulk of the material, from which they are drawn. Nevertheless, they serve to indicate that Magna Carta, far from being only "an ancient and stirring battle cry" to the men of 1258, was, even to the men of 1297, as to those of 1215, "a present help for present ills." This lasting practical value of the Charter was a primary factor in its perpetuation. In this respect its value was supplemented by the peculiar significance of article 1 to the English Church, and by its companion Forest Charter.

[121] Articles 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 18, 21, 23, 24, 26, 27, 31, 32, 33, 34, 35, 37. See table in Note B at the end of this chapter. It is not intended, of course, to convey the impression that this list is complete; the yet unpublished plea rolls, etc., would undoubtedly yield further references of a similar character.

NOTE A

Did the barons in the thirteenth century commonly entertain misconceptions of the Great Charter? Did they confuse the text of the revisions with that of 1215, or believe them to be identical? Did they appeal to the original text in spite of revisions? Contemporary records reveal at least two appeals to articles of John's Charter not contained in the revisions. Matthew Paris states that in 1255 the barons protested that they had not all been summoned according to the tenor of Magna Carta.[122] In a plea to novel disseisin, (19 Ed. I) the defendant protested that the tenements in question were not in the county of Hereford but in the March of Wales, and therefore, *debent in judicium deduci secundum legem Marchie et non per legem Anglie juxta statutum de Ronemede* (article 56).[123] Malden comments on the 1255 case as follows: "It is possible that the many copies of the first issue of 1215 were in fact more numerous or more generally accessible than the reissues which should have superseded them? Or to draw a suggestion from Professor McIlwain's paper, was what had once been declared to be ancient practice considered binding, later laws notwithstanding?"[124]

There is some evidence of confusion among the chroniclers. Roger of Wendover does not quote the text of the 1225 revision because he has already given the text of 1215: *quod cartae utrorumque regum in nullo invenientur dissimiles.*[125] The chronicler of Waverly under date of 1219, states that justices itinerant travelled through England causing the laws to be observed *secundum catam regis Johannis praedictam.*[126] Matthew Paris, referring to the reading of the Charter, 1253, says, *prolataque fuit in medium carta patris suis J[ohannis] . . . et recitari fecit libertates . . .*[127]

Although there may have been some confusion of the texts, some misconceptions, such were probably not shared by the greater lay and clerical leaders among the baronage or by the king's officials. The sheriffs were provided with copies of the revisions for reading in the county courts. Unless they used the wrong document this practice should have kept the final text in mind. Appeals to articles which did not exist in John's Charter, indicate that the contents of the later issues were known and valued. The clergy, to whom were intrusted the keeping of the document, were well informed on those provisions which affected the church. As the educated class, and leaders in so many instances of opposition to the crown, they were probably familiar with the entire text of the Charters. The practice of Henry III and Edward I of attempting to suppress private "liberties" whose possessors could not produce specific written grants of the same, made any documentary evidence of great value. The common formula in answer to petition on infringement of liberties granted by any charter was: *ostendant cartas; quod habeant ad proximum parliamentum cartas per quas clamant; ostendat cartam in Cancellaria;* etc.[128]

Use of the text of 1215 in suggesting devices for control of the king, or appeals in some special case to a practice which had been effectively stated there, and was still in force (and this was true of the two cases noted above) would have been possible

[122] Matt. Par., 5:520-21. *Et responsum fuit quod omnes tunc temporis non fuerunt juxta tenorem magnae cartae suae vocati . . .*

[123] *Placitorum Abbreviatio,* p. 286.

[124] *Commemoration Essays,* p. xxviii.

[125] Matt. Par., 3:92.

[126] *Ann. Waverley,* p. 291.

[127] Matt. Par., 5:377. These last two cases may have been due simply to phraseology, as the Charter, first granted by John, was sometimes referred to in his name.

[128] *Memoranda de Parliamento,* pp. 201, 237, 30, respectively.

occasionally without implying that such were frequent or common, that all the articles of John's Charter because once enunciated were believed to be still in force, or that the texts were commonly confused or unknown.

NOTE B

(The following chronological table of references to articles of the Charter, described in this chapter, affords a more vivid idea of the number of these and their distribution throughout the century, than description above.)

Year	Article	Character of Reference	Cited Above, Page
1220	37	Complaint by Archbishop of Dublin	52-53
1221	12	Individual appeal	45-46
1226	35	Appeal to king against sheriff	49-50
1231	35	Appeal against sheriff	51
1234	35	Amplified in king's council	51, 60-61
	37	Applied to new provision	61
	37	Upheld by king	54
1236	11	Individual appeal	44-45
	24	Protest among barons in council	43
1237	11	Individual appeal	44
1252	9	Reference by chronicler (vague)	38
	5	Complaint by chronicler	42
1253	14	Order to sheriff enforcing provision	46
	23	Complaint and action by Londoners	39
1254	14	Violation corrected by king for St. Albans	46-47
	37	Order for observance	54
(1250-58)	2, 24, 26	Bracton's *De Legibus Angliae*	58
1257	5	Complaint, articles in convocation	42
	18	Complaint, articles in convocation	47
1258	31	Provisions of Oxford	55-56
	32	Individual appeal	40
	5	Complaint in articles of Merton convocation	42
1259	35	Provisions of Westminster	51
1265	9	Complaint by chronicler	38-39
1266	4	Dictum of Kenilworth	56
1267	35	Statute of Marlborough	51
1269	35	Appeal to king from county of Northumberland	51
1272	13	Recognized in king's orders, (two instances)	46
	8	Recognized in private grant from king	47
1275	4, 5	Statute of Westminster I	56
1276	34	Upheld by the sheriff	48
	31	Individual appeal	41
(1275-85)	19	King's reply to articles of the clergy	41-42
1279	13	Recognized in king's orders	46
	34	Individual appeal	48
	4	Statute of Gloucester	56
1283	16	Complaint by the men of York	62
1284	33	Complaint by archbishop	40
1285	11	Complaint in petition of archbishop and clergy	44
	26	Statute of Westminster II	56-57

Year	Article	Character of Reference	Cited Above, Page
(1285-90?)	(all)	*(Mirror of Justices)*	58-59
1290	14	Accusation of violation in trial of judges	47
	12	Individual appeal (two cases)	46
	34	Individual appeal	48
	11	Individual appeal	45
	7	Individual appeal	40
1292	24	Individual appeal	43
1298	11	Order of justices	44
1299	19	Grievances of clergy	42
1300	9, 11	*Articuli super cartas*	39, 44
1302	23	Complaint of Londoners; royal investigation	39
	24	Individual appeal	43
1306	27	Individual appeal	40-41

CHAPTER V

WHAT MAGNA CARTA MEANT TO THE ENGLISH CHURCH

Such of the clergy as were tenants-in-chief of the king profited, of course, by all the feudal provisions of the Great Charter. Among those appealing to specific provisions of the Charter, noted above, are to be found the archbishop of Canterbury, an abbot and his monks, a chaplain, the Canterbury clergy, and others. Article 14, regulating amercements, and article 5, restricting abuses of property during ecclesiastical vacancies, profited the clergy; and in view of the policy of Henry III, the last must have been especially valuable. But it is the object of this chapter to point out what the Great Charter meant to the English Church[1] as a great privileged ecclesiastical organization: what were the characteristic grievances of the church in the thirteenth century, and how the clergy interpreted the vague but sweeping promise of article 1 to cover them all.

The thirteenth century saw a continuation of the struggle of the English Church to maintain its position and privileges on the one hand against the growing power of the state; on the other, against the world dominance aimed at by the papacy. In this struggle Henry III was anathematized by the clergy as their greatest despoiler and oppressor, for this very monkish king, who "loved holy church more than any king before him," attacked the church directly through encroachments of the royal power, and indirectly through his support of the papal policy towards England.

Henry constantly interfered with freedom of elections: he required monasteries to pay for the *congé d'élire;* he frequently forced his own candidate, usually an unworthy one, into even the highest church offices. Such royal interference lead to long and costly appeals to Rome, and meanwhile offices remained vacant or rival candidates engaged in demoralizing struggles for the prize. The king issued edicts affecting the church without its consent, and tried to prevent discussion in ecclesiastical assemblies. He claimed the property of ecclesiastics dying intestate, and by exaggerating rights of wardship, plundered ecclesiastical vacancies. The old quarrel over the respective jurisdiction of lay and ecclesiastical courts was revived in all its bitterness: the king denied the claim of the church to have ecclesiastical

[1] It is noteworthy that this phrase, the *English Church,* appears here for the first time in any formal document; indeed it does not seem to have been used at all before John's reign, and but rarely before 1215. Earlier charters speak of *holy church.* McKechnie credits the origin of the term to the royal-papal combination of John and Innocent III: "When English churchmen found that the tyrant, against whom they made common cause with English barons and townsmen, received sympathy and support from Rome, the conception of an English church that was something more than a mere branch of the church universal, began to take clearer shape." *Op. cit.,* p. 192.

judges decide whether a case belonged to the ecclesiastical or secular court; he even went so far as to prevent the clergy from deciding in purely ecclesiastical cases, hindered decisions, or gave judgment himself. Henry made constant use of the royal privilege of exacting *dona* from religious houses. After 1253, with papal support, he established the right to tax the beneficed clergy.[2] "Always hitherto," laments the chronicler, "the laity were accustomed to pay tithes to the prelates, but now the prelates were compelled to pay tithes to laymen."[3]

The alliance between Henry III and the papacy is not hard to explain. As a child he had done homage to Gualo as a sign of continuation of the vassal relationship established by John; the years of his minority were spent under the tutelage of the bishop of Winchester and the papal legate. The impression made on the child was not forgotten by the man. In 1245 Henry declared: "You may be sure that we shall always exhibit and cherish utter obedience, faith, and devotion to the Pope as to our spiritual father, and to the holy Church of Rome as to our mother; . . . . For beyond the general reasons which bind all Christian princes to the church, we are bound to her more closely than the rest for special reasons; when we were deprived of our father, while we were still in our nonage, with our realm not only turned away from us, but turned against us, mother Roman church herself, through the lord cardinal Gualo, then legate in England, recalled the realm to our peace and sway, consecrated and crowned us king, and seated us aloft upon the throne."[4] The king further admitted that he "neither wished nor dared gainsay the Pope in any matter."[5] Throughout the reign, papal influence made itself felt through letters and commands direct to the king, and by means of legates and lesser agents who assumed dictatorial powers over the native clergy.

On its practical side, the alliance secured to the king support in some of his encroachments on the liberties of the English Church. It was through papal support and the precedents of papal taxation that the king was able to establish the right to tax the clergy. He secured release from inconvenient promises and oaths. It has been suggested that the frequent violation of papal bulls by *non-obstante* clauses in later documents may have

[2] For summary accounts, see Prothero, *Simon de Montfort*, pp. 152-54; Stephens, *A History of the English Church*, chs. 12, 13; Gasquet, *Henry III and the Church;* Mitchell, *op. cit.* For contemporary lists of grievances, see those cited below.

[3] Matt. Par. t., 3:155.

[4] Quoted, Richardson, *National Movement*, pp. 86-87.

[5] Matt. Par., 4:10.

influenced Henry in his evasion of the Charters.[6] The English clergy were forbidden to direct against the king the usual punishment for violation of the Charter—the great excommunication.[7] In return, the pope was permitted to find in England a veritable "garden of delights"; it was an "unexhausted well; and where many things abound, from the many can much be extorted."[8] The emperor was told that "Henry of all princes in the world was the most completely bound to obey the pope's commands, since he was the pope's sworn vassal and tributary."[9] The struggle between empire and papacy created the need for unlimited funds. Successive popes levied contributions at will upon the English clergy, had them assessed and collected by their own agents, and threatened recalcitrants with excommunication.[10] Many of the best prebends were conferred upon Italian ecclesiastics;[11] besides the fact that these foreigners drew money out of the kingdom, "thereby impoverishing it beyond measure," the English complained that in their benefices "neither the laws, nor the support of the poor, nor hospitality, are observed; neither is the preaching of the word of God attended to, nor the useful ornamenting of churches, nor the cure of souls, nor are divine services performed in the churches, as is proper and the custom of the country; but in their edifices the walls and roof fall together and are entirely destroyed."[12] Other complaints were directed against the practice of forcing prelates to come to Rome for confirmation, or to plead before the Curia; the setting aside of agreements by *non-obstante* clauses; the selling of confirmations of elections, and other practices resulting from the venality of the Curia.[13] And the king, "whose business it was to protect the commonwealth, and avert such injuries and dangers," stood by "with averted eyes and closed ears."[14]

In some respects violation of the liberties of the church was not so flagrant in the reign of Edward I. This king was less subservient to the

[6] Richardson, *op. cit.*, pp. 106-7; cf. Matt. Par. t., 2:422, *et al.*

When the legate Otho came to England in 1237, "among the special faculties supplied to him for his mission was one authorizing him to absolve Henry from whatever oaths he had been constrained to take in prejudice to the rights of the Crown." Gasquet, *op. cit.*, pp. 163-64. A bull of April 13, 1261, released Henry from his oath to observe the Provisions of Oxford. *New Rymer*, Vol. 1, Part 1, p. 405. Any acts forced on the king during his subjection to Simon de Montfort and the barons were voided by a bull of 1265. *Ibid.*, 1:459

[7] See *infra*, ch. 7.

[8] Speech of Innocent IV, at the Council of Lyons, quoted, Richardson, *op. cit.*, p. 97.

[9] Quoted, *ibid.*, p. 115.

[10] For the chief of these see Mitchell, *op. cit.*, pp. 264-68. Otho, during the three years of his legation, "by means of procurations, licenses for neglecting vows of crusade, usurpation of patronage, direct taxes, and by other agencies," extorted a sum "equal to full half the money in England, ..." Richardson, *op. cit.*, pp. 92-93.

[11] *Ibid.*, pp. 92-93; Gasquet, *op. cit.*, pp. 184-85.

[12] Matt. Par. t., 2:149-50.

[13] Prothero, *op. cit.*, pp. 148-49.

[14] Matt. Par. t., 2:189.

papacy than his father had been; and indeed, until the time of Boniface VIII, there were few strong pontiffs in the chair of St. Peter. Still, Edward's conception of the rights of the crown, and the power of the royal, as against the ecclesiastical, jurisdiction was as strong as his father's, and more consistently and effectively carried out. In his contest with such zealous prelates as Peckham and Winchelsea, Edward was ultimately the victor. Peckham's canons of 1279, in so far as they dealt with secular matters, were promptly annulled by the king, as were those of Lambeth two years later.[15] The jurisdiction of the ecclesiastical courts was further restricted by the statute *circumspecte agatis*, while increase of church property was limited by the statute of Mortmain. Edward continued his father's policy of taxing the clergy. By resort to the drastic penalty of outlawry, he enforced his will over them, in spite of the express prohibition of Boniface VIII in the famous quarrel of 1296-97, and even obliged that haughty pontiff to modify his claims. Toward the end of his reign, Edward renewed the old royal-papal alliance to the detriment of his own kingdom. In 1305 he was absolved by bull of Clement V from his oath to observe the confirmations of the Charters, and the additional grants, of 1297 and 1300-1301. For this service the pope was rewarded by permission to his agent William de Teste, to collect "first fruits" from English benefices.[16]

Quod Anglicana ecclesia libera sit, et habeat omnia jura sua integra, et libertates suas illesas. If the English Church was to seek in Magna Carta a defense against these encroachments of king and pope, it was upon this single sentence that they must base their claims. It has been characterized as "deplorably vague," capable of covering "the widest encroachments of clerical arrogance,"[17] and so the clergy chose to interpret it. Contemporary accounts clearly indicate: first, that the phrase "the church shall be free," or "liberty of the church," was constantly used to embrace any and all powers, privileges, and immunities to which the church could lay claim; and second, that in attempting to maintain its "liberty" in this comprehensive sense, constant appeals were made to article 1 of the Great Charter.

[15] In this council of 1281 Peckham had tried to "withdraw from the cognizance of the civil courts all suits concerning patronage and the disposition of the personal effects of ecclesiastics." Tout, *History of England*, pp. 151-52.

[16] The avarice of the papal agent on this errand was largely responsible for the statute of Carlisle, 1307.

[17] McKechnie, *op. cit.*, p. 192.

The phrase *liberty of the Church* appears in the charters of Henry I and Stephen. *Select Charters*, pp. 117, 143.

Stephen Langton is credited with securing the comprehensive guarantee in the Charter: "This emphatic declaration, which has no counterpart in the Articles of Barons, is repeated twice in Magna Carta . . . . If the original scheme of the barons showed no special tenderness for churchmen's privileges, Stephen Langton and his bishops were careful to have that defect remedied." McKechnie, *op. cit.*, p. 191.

This position of the clergy in the reign of Henry III is best illustrated by certain letters and formal lists of grievances. A letter of Robert Grosseteste, bishop of Lincoln,[18] to the archbishop of Canterbury (1236?) cites the following grievances of the church against the king: abbots are appointed as justices itinerant, and prelates forced to hold other secular offices; the clergy are forced to submit to lay tribunals, secular judges decide whether cases belong to lay or ecclesiastical courts, judges are prevented from deciding in cases purely ecclesiastical, and decisions made by them are hindered; the clergy are compelled to give account of the secular power in their right of patronage, and their right of refusal to institute persons presented is denied. Three of these specific abuses are described by the bishop as encroachments on the "liberty of the Church."[19] And this phrase is used incidentally four other times in the course of the letter and twice in the résumé.[20] Then Grosseteste concludes with a reminder that these abuses are all the more unwarranted because of the formal excommunication pronounced at Oxford against all violators of the liberties of the church, and because "the lord king through his charter granted that the English Church shall be free, and because archbishop Stephen of blessed memory and his suffragans with the consent of the lord king and the barons excommunicated all who should presume to go against the tenor of the aforesaid charter."[21]

Four years later Grosseteste writes another significant letter to Archbishop Edmund, urging that he will resist bribery and intimidation in elections, especially in the coming election of the bishop of Hereford. Then the bishop prescribes a method by which this may be done, a method which will strike "terror to the malicious, and comfort to the elect." Let the archbishop send to the place of election at the appointed time some prudent and resolute persons to expound clearly and openly "the charter of king John concerning the granting of freedom of elections and the confirmation of Pope Innocent of holy memory of that grant, and the sentence directed against all violators of the liberties granted in the Great Charter of the lord king, in which it is granted that the English Church shall be free forever, and have all its rights entire and its liberties inviolate," and especially the sentence pronounced at Oxford against violators of liberties of the church.[22]

[18] Roberti Grosseteste, *Epistolae*, pp. 205-34.

[19] *Est et aliud usurpatum et usitatum in regno Angliae in violationem et diminutionem libertatis ecclesiasticae, videlicet, quod viri ecclesiastici, . . . compelluntur in hac parte judicio laicali se subicere.*

Item in ecclesiae libertatem non mediocriter delinquitur, cum judices ecclesiastici ne causas, quas notum est pure esse ecclesiasticas, in foro descendant ecclesiastico . . . Accedit adhuc et aliud in libertatis ecclesiasticae detrimentum, quod ipsos ecclesiae praelatos fortius coartat, ut ipsi etiam per se suaque propria actione violent libertatem ecclesiae. *Ibid.*, pp. 214, 225, 227, respectively.

[20] *Ibid.*, pp. 215, 219, 224, 230, 231.

[21] *Ibid.*, pp. 230-31.

[22] *Ibid.*, pp. 264-66.

In 1255 the clergy of the diocese of Coventry and Lichfield drew up a brief list of grievances—*Articuli pro communitate*—to be sent to the pope.[23] The chronicler of the *Burton Annals* states that similar articles were drawn up by all the dioceses of England. This list deals particularly with abuses of forcing clergy to appear before lay tribunals, punishing and amercing clerks by forest officials, the "crusading tenth" and its collection. The document concludes with the statement that by these and other abuses, the church is "more bitterly and enormously wronged than it was before the charter of liberties granted by the lord king, notwithstanding the sentence of excommunication directed against all going against the liberties contained in it, or even the oath upheld for the preserving of the same."

These years of double oppression by king and pope in exacting heavy contributions from the clergy for the Sicilian affair were bitter ones for the English Church. Complete and imposing lists of grievances were drawn up in Convocation in 1257, and again in the Convocation of Merton, 1258. The document of 1257[24] consists of some fifty items, stressing violations of the church's right to freedom of elections, patronage, ecclesiastical jurisdiction, sanctuary, control over wills and the property of persons dying intestate, degradation and punishment of clerks, ecclesiastical vacancies, purveyance, and others. Six times, in one way or another, the statement is made that these practices are against the "liberty of the Church."[25] The document concludes: "Although our lord the king swore at his coronation to preserve the rights and liberties granted to churches, and although he has confirmed them in the beginning of the great charter, these are, nevertheless, constantly attacked, disturbed, and mutilated by his officers . . ."[26]

The articles of Merton, stressing some of these same grievances with variations, contain several emphatic phrases illustrative of the clergy's comprehensive use of this term "liberty of the Church." The clergy are obliged to appear before secular tribunals, *sicut de perjurio, fidei transgressione, sacrilegio, violatione ac perturbatione ecclesiasticae libertatis.* Amercements are made "in subversion of the liberty of the Church." Excommunicated persons are liberated by the government, "in contempt of the keys of the Church, and in subversion of ecclesiastical liberty." Bishops summoned before the justices are not allowed to send proctors, against the liberty and custom of the church. All the clergy concur in reforming the state of the

[23] *Ann. Burton,* pp. 362-63.

[24] Matt. Par., 6:353-65; Matt. Par. t. 3:482-93.

[25] Abuse of the right of sanctuary is said to be *contra ecclesiasticam libertatem;* release of excommunicated persons by the government is contrary to right and custom of the kingdom and the liberty of the Church; plans are to be made for the resisting of *aliarum oppressionum contra libertatem ecclesiasticam;* provision is made for the punishment of bishops committing or permitting abuses, *pro aliqua transgressione libertatis Ecclesiae;* etc.

[26] Matt. Par. t., 3:493. For another reference to the Charter in this document, see *infra,* p. 74-75.

Church, *et reparatione Ecclesiasticae libertatis*. At Merton the clergy devised remedies for these abuses; thus the document concludes with the statement, "Lastly, the aforesaid remedies extend as well to present as to future grievances, principally since the date of the excommunication, published solemnly at London by the prelates with the consent of the king and lords of the kingdom, against the transgressors of the charter of common liberties."[27]

Matthew Paris gives an interesting case which illustrates how the idea of the liberty of the church, and its guarantee by Magna Carta could be used by an individual group of clergy. In the book of *Additamenta* is given a detailed account of how certain justices summoned the mayor and two men of each town in the liberty of St. Albans[28] to take part in amercing certain local offenders. When they failed to appear, the town and liberty of St. Albans were amerced a hundred pounds. This whole transaction, the account tells us, involved five acts of injustice against the liberty of St. Albans: these men ought not to have been obliged to go out of their liberty; if the summons had been justified, they were not properly summoned, nor the legal space of time allowed for making a citation; the abbot should have received the amercements made; and the latter were not taken according to the Great Charter. St. Albans had just paid a hundred marks to the queen and she had promised to observe their liberties, but now she demands a hundred pounds, "against our liberties, which we were wont to enjoy during the times of all our lord the king's predecessors, which liberties have been preserved inviolate, and notwithstanding, she demands present aid. This we could not do without enormous loss, the very destruction of our church, without risk to the soul of our lord the king, who has so frequently sworn to regard the liberties and the constitution of the church. Also, a common injury has been done to the English Church, since the sheriffs of England have compelled priors and other prelates of the churches to make a fine, since the passage of our lord the king, contrary to that article in the common charter, 'I wish the English Church to be free.' "[29]

The whole theory of the church as to its liberties and their guarantee in Magna Carta was admirably formulated in the grievances of 1257. The statement was evidently made in answer to the counter claims and policy of the crown as follows:

> It happens now and then that, although the Church has from ancient times enjoyed the possession of sundry property and liberties, and although the king has granted to churches and to ecclesiastical persons at the beginning of his great charter on the

[27] *Ann. Burton*, pp. 413, 414, 416, 422; this document is given Matt. Par. t., 3:455-68, under date of 1257, but does not appear in the *Additamenta* of the Rolls Series.

[28] In this account the term "liberty" is used both as referring to the jurisdiction of the monastery, and in the abstract sense used throughout this chapter.

[29] Matt. Par. t., 3:444.

liberties granted to the English, and has confirmed to the churches and to ecclesiastical persons all the liberties which they had enjoyed previously, he, nevertheless, frequently obliges the prelates to show how, and by what warrant, they enjoy such liberties. If the prelate, thus obliged to appear, shows the charter of the donor, although it be said in such charter that the donor has given such and such liberties, and all other liberties which he had or might have over the extent of property thus given by him, or whether such other liberties may be contained in the act of donation under a clause as general as possible, and though the prelate maintains that the said liberty is included in such general clause; all this will avail him nothing, if this liberty is not expressly mentioned in the charter. Thus according to the opinion of the king's servants, this expression, *all,* taken absolutely, is considered as nothing, though according to right and sound reason, it ought to bear no exception, particularly with regard to donations to holy places. Although the liberty in dispute be expressly mentioned in the charter, the king's people say that the charter avails not, unless there has been possession or usage of such liberty . . . . On the contrary, if no express mention is made in the charter of the liberty in dispute, but if the possession and usage of it be notorious, and if the prelate says that such liberty has been given to the church, not in express, but in general terms, or that formerly the church had a charter expressly mentioning such liberty, which charter is either lost or destroyed by time; or if he maintain that the donation was made without writings at the death of former kings, and that on this account the Church has on its side a just title, good faith, and long possession, and thus she rests on an indefeasible right; the king's people say that this is not sufficient, because such possession is an usurpation or illegal occupation, since it is in opposition to the king. Whereas this is an extraordinary pretension, that such and so ancient a possession as this cannot avail the churches against the king, when, on the contrary, in such things as can in no way be possessed by the king, he claims for himself a right against the churches by reason of custom or usage, as it appears in all the aforesaid oppressions and others similar to them, in which sacrilege or manifest injustice overcome title, oppression bears down good faith, and custom is put aside by single act or prolonged abuse in a case where justice has been tampered with several times. Although our lord king swore at his coronation to preserve the rights and liberties granted to churches, and although he has confirmed them in the beginning of the great charter, these are, nevertheless, constantly attacked, disturbed, and mutilated, by his officers. Thus he attacks not only general, but even special liberties, namely, such as have been granted by his predecessors and confirmed by himself, those even of recent date, as well as the donations which he himself has granted, and others which he ought to protect and defend; . . . .[30]

The policy of the government as revealed in this complaint seems to be leading straight to the *quo warranto* and perhaps to the *mortmain* of the next reign. But in spite of the growing indication that in the end, the government and not the church, was to profit most by the vagueness of article 1, the attitude of the clergy did not change in the reign of Edward I. They continued to interpret the phrase "liberty of the Church" most comprehensively; they still defended this liberty against royal encroachments by appeals to the Great Charter. Articles of the bishops, 1285, protest against Edward's statute of Mortmain and the king's grudging reply to their complaints, on the grounds that he is despoiling the church of its liberty; they

[30] *Ibid.,* pp. 492-93; Matt. Par., 6:363-65.

quote in full the words of article 1 of the Charter.[31] In the same petition they ask that *magna carta de libertatibus ecclesiae et forestae* be observed in all articles.[32] In the spring of 1297, the king, in answer to a petition from the bishop of London, orders the sheriffs of the city to desist from arresting clerks for crimes which belong to the ecclesiastical jurisdiction. The order quotes the bishop's petition as follows: "since in the Great Charter of the liberties of England it is contained that the English Church shall be free, and have all its rights entire and its liberties inviolate; and that Church among its other liberties had this liberty from antiquity, namely that it be not permitted any layman to seize or imprison priests or clerks, unless by our special order, ..."[33] Five years later, William de Fordringhey sued the bishop of London and others for securing his removal from his church by the king's order, and then appropriating his goods. In his protest against the treatment he has received, William bases his claim on the ground that *in magna carta continetur quod ecclesia anglicana libera sit & habet omnia jura integra et omnes libertates suas illesas.*[34] The author of the *Mirror of Justices* thinks that the Great Charter, if properly enforced, ought to secure to the church various specific liberties. Quoting this same article, he says, "some corporal punishment should be ordained, and in particular for the lay judges, royal ministers, and others who judge clerks for mortal crimes, and to infamatory corporal punishment, and detain their goods after their purgation, and for those secular judges who meddle in the cognisance of matrimony or testament or other spiritual matters."[35]

In view of their interpretation of article 1 of Magna Carta, then, it is only natural to find the clergy repeatedly, throughout the thirteenth century, throwing their support to the side of the barons against the king to secure confirmation and observance of the Charters; renewing from time to

[31] *Quod in hoc spoliatur ecclesia, obtenta pacificē usque ad sua tempora liberte; cum dominus rex bonae memoriae, pater suus in primo capitulo magnae chartae sic dicat: Imprimis concedimus, et praesenti charta confirmamus pro nobis et heredibus nostris in perpetuum, quod Anglicana ecclesia libera sit, et habeat libertates suas illaesas, et integra jura sua;* Wilkins, *Concilia* 2:117.

[32] When the king replied that he believed that the Charter was observed, the clergy retorted that if he would deign to examine the articles he would see to what extent they were being infringed.

[33] *Liber Custumarum* 1:213.

[34] *Abbreviatio Placitorum*, p. 296.

[35] *Mirror of Justices*, p. 176.

A very interesting example of this type of appeal to the Charter is to be found in the second year of Edward II (so dated in Wilkins, *Concilia* 2:314). Among other grievances of the clergy of the province of Canterbury is one against royal encroachments on ecclesiastical jurisdiction. The petitioners go back to William the Conqueror's separation of state and church courts, describe his system, *prout haec et alia in charta praedicti W. regis plenius inscribuntur, continenturque in magna carta de libertatibus concessa per celebris memoriae Henricum regem Angliae; quod idem rex pro se et heredibus suis in perpetuum concessit, et charta sua confirmavit archiepiscopis, episcopis, abbatibus et prioribus hujus regni, quod Anglicana ecclesia libera sit et habeat omnia jura sua integra, et libertates suas illaesas; . . . .* The petition then goes on to ask the particular liberty of untrammeled ecclesiastical jurisdiction.

time the effective combination of 1215. The support of the church was invaluable. As one writer has so effectively put it, "the mitre has resisted many blows which would have broken the helmet."[36] What the mitre could contribute in the struggle for the Charters were the very faculties needed to support the more blunt and warlike accoutrements of the lay barons. The wealth of the church played its part in "redeeming" the liberties; the clergy contributed to the aids of 1225 and 1237; Matthew Paris makes clear that the hated *tenth* for the Sicilian crusade was finally granted by the clergy only on condition that the Great Charter "so often promised, purchased, and repurchased," be thenceforth inviolably observed.[37] To the keeping of the clergy, the educated class in the state, men of legal training and ability, were entrusted copies of the Charters; and well they knew the contents of these and all other documents which affected their liberties. They alone could inflict on violators the penalty of the great excommunication.[38]

Two episodes may suffice to illustrate what the support of the church meant to the barons in their contests with the king. In the council of 1244, Henry III had made his demands for an aid, and had been answered by the assembled magnates that they desired time for consultation. "When the magnates had left the refectory, the archbishops, bishops, abbots, and priors met together in a private place by themselves to deliberate on the matter, and at length asked the earls and barons if they would agree to their advice, in giving an answer and making provision in the case; to which the latter replied, that without the common consent of all they would do nothing." By common assent, a committee of twelve was chosen, "so that whatever these twelve might determine on, should be published to all in general, and that no terms should be offered to the king, unless by the general consent of all." Since the Charter of Liberties had not been observed or the last aid put to good use, the election of a justiciar and chancellor was demanded. The persistent efforts of the king to detach the prelates from the opposition by showing them a letter from the pope, and by attempting to win them over one by one, failed. "Some parties wishing that the prelates and laymen would give a milder answer to the king, the bishop of Winchester replied to them in these words on theological authority: 'Let us not separate ourselves from the general wish; for it is written, "If we be divided, we shall surely die."'"[39] Clergy and barons did not succeed in choosing a justiciar and chancellor at this time, nor did they secure any formal confirmation of the Charters, but the general aid asked by the king was effectively resisted, and one more precedent established against its arbitrary imposition, or any grant without redress of grievances.

[36] Sir Francis Palgrave, quoted Stephens, *A History of the English Church*, p. 246.

[37] Matt. Par., 5:623; see also p. 452.

[38] See *infra*, ch. 7.

[39] Matt. Par. t., 2:8-11.

In the struggle for a confirmation of the Charters, 1297-1301, the success of the barons was due in no small measure to the difficulties in which Edward found himself, his wars and financial necessities. Once more, however, the barons received the invaluable support of the church. The clergy were suffering from the old grievances, and were affected by Edward's recent financial measures. In addition, it must not be overlooked, that this was the period of the struggle with the pope and clergy over the bull *clericis laicos*. Historians usually emphasize the outcome of this struggle as an outstanding victory for the king over both the pope and the English Church. No doubt it would have been much more difficult for the clergy to have stood firm in support of this bull at the expense of outlawry and confiscation of property in the days of Edward I than a century earlier; many individual prelates hastened to make their peace with the king. But the clergy as a whole was not so quick to yield, and finally submitted partly to secure something which meant more than escape from taxation or support of the pope. They would once more buy back in the form of confirmation the document which promised that "the English Church shall be free."[40] July 16, 1297, Archbishop Winchelsea summoned his clergy to London to deliberate on certain arduous matters, *videlicet, de Magnis Cartis libertatum et foreste salubriter innovandis, et de juribus ac libertatibus ecclesie anglicane, . . .*.[41] This move, thinks M. Bémont, troubled Edward more than the insurgency of the barons, and was really responsible for the reconciliation between king and archbishop and the promise of a confirmation of the Charters late in July.[42] The king himself evidently realized the high value set by the clergy on the Great Charter at that time. In the convocation at London, Winchelsea told his clergy that when he had approached the king about the oppressions of the church, Edward had replied, "If the clergy will give me a satisfactory portion of their goods for my war, I will have the old charters of liberties and of the forest firmly observed."[43] The same thing happened in the convocation of the northern clergy at York in November. In order to win the gratitude of the clergy and move them to grant a subsidy, the king promised a confirmation of the Charters. At first the grant was refused. The archbishop prorogued the assembly, intimating, however, that if the clergy could be sure of the observance of the

[40] That is not to say, of course, that the treatment received at the hands of the king at this time was not in itself one grievance which a confirmation of the Charters was expected to remedy in the future.

[41] Wilkins, *Concilia* 2:226.

[42] *Ce langage inquiétant émut Edouard Ier plus que l'attitude révoltée des comtes.*" Bément, *op. cit.*, p. xxxvii.

[43] *Ann. Worcester*, p. 532.

Charters, the subsidy would be forthcoming.[44] After the confirmation of 1301, the clergy of the province of Canterbury wrote to the pope, asking permission to grant the king a *fifteenth* of temporalities for one year. The subsidy, like that just granted by the laity, the letter explains, is to be a gracious return for the confirming at the Lincoln parliament of certain liberties, *toti regno pernecessarias et utiles, chartam videlicet communium libertatum, et de foreste . . . .*[45] It was Winchelsea and his clergy who saw to the reading of the Charters when they were finally confirmed in parliament by Prince Edward and the king's counsellors in the fall of 1297. It was Winchelsea, of course, who with his bishops, pronounced the sentence of excommunication against violators in 1297 and again in 1300.[46]

In the perpetuation of the Great Charter, then, the English Church played an important rôle. Such of the prelates as held baronies profited by its various feudal provisions. It contained some clauses designed especially for the clergy. More than this, it guaranteed "that the English Church shall be free and have all its rights entire and its liberties inviolate."

[44] *Qui ut gratiam captaret clericorum, eosque ad concessionem hanc excitaret, magnam chartam de libertatibus, et chartam etiam de foresta confirmare promisit. . . . et quod clerus, si de observatione chartarum inviolabili certus reddi posset, subsidium illud concedere vellet.*

The Northern clergy were also actuated by need of protection against the Scots. Wilkins, *Concilia* 2:235.

[45] *Ibid.*, 2:274.

[46] See *infra*, ch. 7.

CHAPTER VI

MAGNA CARTA AND THE FOREST CHARTER

The character of the king's "forest" and forest jurisdiction has been effectively described in the recent studies of Professor Turner and M. Petit-Dutaillis.[1] The object of this chapter is simply to note how far the grievances suffered by inhabitants of the forest districts were remedied by the Charter of the Forest; then to indicate the intense interest consequently maintained in this charter throughout the thirteenth century, and the close connection of the document with Magna Carta.

The term "forest," of course, had a legal, not a physical, significance. It applied to large districts reserved as the royal hunting grounds, but the forest included not only woodlands, but "miles of moorland and heath and undulating downs might be included, and even fertile valleys, with ploughed fields and villages nestling among them."[2] At the beginning of the thirteenth century, the forests were scattered through all but six or seven counties, and possibly comprised a third of the territory of the realm.[3] The inhabitants of these districts were subject, not to the common law of the land, but to the more severe regulations of the forest code.[4] While the very existence of a code afforded some protection, its provisions operated largely to the royal advantage, and were contrived to supplement the purse, as well as the pleasure, of the king.[5] The forest jurisdiction touched all classes within its domains, and, through the royal policy of extensions, tended to include an increasing number of people. The king's monopoly deprived the nobles of hunting privileges. Freeholders could not improve their land or utilize its natural advantages. The poorer classes were deprived of an easy means of obtaining food, fuel, and building materials.[6]

[1] Turner, Introduction to *Select Pleas of the Forest;* Petit-Dutaillis, *Studies Supplementary to Stubbs Constitutional History,* Vol. 2, The Forest.

[2] McKechnie, *op. cit.,* p. 415.

[3] M. Petit-Dutaillis' estimate, *op. cit.,* pp. 163-64; Inderwick, *The King's Peace,* attempts to map out forest districts for thirteenth century, pp. 136-38: but cf. Turner, *op. cit.,* pp. cvii-cviii, who thinks that no definite estimate can be made.

[4] Forest law was first reduced to a code by Henry II in the Assize of Woodstock. *Select Charters,* pp. 185-88; McKechnie, *op. cit.,* p. 415.

[5] "In resisting the demand [for disafforestment] the king was not only fighting for his prerogatives, . . . he was also fighting for his Treasury." Considerable income was derived from fees for exemptions and special privileges, fines and amercements connected with forest jurisdiction, and the sale of game. Petit-Dutaillis, *op. cit.,* p. 210.

[6] *Ibid.,* p. 164. "The forests swarmed with game, and even in time of famine it was unlawful to touch it. . . . The very owners of the soil were forbidden to make clearings on pain of fines and yearly compositions. A tenant was not allowed to follow his own wishes in the development of his land, even to the extent of making a hedge or ditch. . . . the law forbade the use of the grassland and woods for the feeding of cattle; and one might not cut down a tree or a bough on one's own property except under the surveillance of the all-powerful forester, with his vexatious restrictions and demands." *Ibid.,* p. 164; (cf. also McKechnie, *op. cit.,* pp. 420-30).

Offenses, however slight and unwitting, were punished by fines and imprisonment, made more burdensome by the discretionary authority of forest officials and the elaborate system of courts. It was not only the actual misdoer who suffered: "at every inquisition, representatives from the neighboring townships must be present, while the entire population were compelled to meet the justices on their forest eyres."[7] The obligation of suit of court affected even those without the bounds of the forest; absence or failure to fix the blame, no less than actual offenses, led to heavy amercements, a lucrative source of revenue for the royal treasury.[8] Ignorance was no excuse: "a boy found a dead fawn and carried it away, not knowing that he was doing wrong; he was kept in prison for over a year."[9]

John's Great Charter of 1215 had exempted persons living without the forest from attendance at forest courts unless concerned in the pleas in some way (article 44), and had promised disafforestment of districts made forest in John's reign (47), and reform of all "evil customs" (48). These articles were omitted in 1216, as among the *capitula gravia et dubitalia,* reserved for further consideration. In 1217 they were expanded and set forth in a separate document of seventeen articles, the *carta de foresta.*[10] The smaller document was reissued with the Great Charter in 1225, and associated with it in all subsequent confirmations of the thirteenth century.[11] The Forest Charter did not afford complete relief from the grievances described above; only abolition of the forest could have done that. It did afford relief along the following lines. Districts other than royal domain, afforested by Henry II, Richard, and John, were to be disafforested, and returned to the jurisdiction of the common law (articles 1, 3). Restrictions on the use of the natural advantages of the forest were modified (9, 12, 13) and the lawing of dogs regulated (6). The nobles were granted very limited hunting rights (11). Obligations of suit of court were modified (2, 8); wardens forbidden to hold pleas (16); punishment fixed at fine, imprisonment, or outlawry, instead of death or mutilation (10); annual amercements for offenses committed since the reign of Henry II were remitted (4); and amnesty granted those outlawed for forest offenses since the reign of Henry II (15). Illegal exactions and other malpractices of foresters were prohibited (5, 7, 14). Previous grants of special privileges were confirmed to clergy and nobles (17).

[7] For specific instances of the way this system operated see *ibid.*, pp. 420, 428.

[8] For the lucrative system of continuous fines see Petit-Dutaillis, *op. cit.*, pp. 156-57.

[9] *Ibid.*, p. 202.

[10] For complete text, see Appendix B.

[11] See Appendix C.

The Forest Charter was directed to archbishops, bishops, abbots, priors, earls, barons, justiciars, foresters, sheriffs, reeves, ministers, *et omnibus ballivis et fidelibus suis;* it was thus intended primarily for two classes, the nobles who were to profit by the privileges granted, and the officials who were to be restricted in the conduct of their offices. The charter also contained a clause analagous to article 37 of Magna Carta, providing that the recipients must in turn observe these liberties toward their tenants. The liberties were such that if properly observed, they must have benefited all freemen in some respects.[12] To those living within the districts to be disafforested, the charter was made the basis for appeals to secure the carrying out of this promise in full. To those who remained within the forest, articles ameliorating forest laws and restricting officials were of vital interest.

The Charter and the Struggle for Disafforestment

The charter promised immediate disafforestment of districts afforested by Richard and John. Districts afforested by Henry II were to be viewed by "good and lawful men," and disafforestments made only according to the results of these perambulations; furthermore these districts were to be disafforested only if the afforestment had been made to the damage of the property holders. During the ten years after 1217, the baronial and ecclesiastical counsellors of the young king seem to have acted in good faith in carrying out the promises made in these articles. Writs were issued July 24, 1218, directing perambulations of the forest to be made by twelve knights elected for the purpose, *secundum tenorem carte nostre de libertatibus foreste concessis probis hominibus Anglie.*[13] The results of the perambulations were to go to the king, to be acted upon by the council. Either the perambulations were not carried out in all counties or the results were unsatisfactory, for in December, 1219, seven sets of justices were appointed to inquire in seven groups of counties what districts were to be disafforested, and definite instructions given them. Turner thinks it probable that districts afforested by John were actually disafforested but that the council was dissatisfied with the report on those districts afforested by Henry II. After the reissue of the Charters in 1225, justices were appointed for perambulations in twenty-four counties; no action was to be taken, however, until authorized by the council after receiving their reports. May 8, justices were ordered to cause the charter to be observed according to perambulations made, or to be made. In June a sharp remonstrance was directed to William of Lancaster and

[12] Perhaps the villeins also. The forest and the forest courts were so distinctly under the royal jurisdiction; the villein was being drawn more and more under royal jurisdiction, in the case of crimes and offenses which did not involve his relations with his lord.

[13] *C. P. R.*, 1216-25, 162; Turner, *op. cit.*, p. xciv. The following account is based on Turner, pp. xciv-cix, except where otherwise specified.

seven other individuals who had apparently tried to stay the process of disafforestment in their districts, to the injury of "knights and other good men of the neighborhood." Officials were to proceed with disafforestment "according to the tenor of our aforesaid charter."[14] It would be impossible to estimate the extent of the disafforestments actually carried out in these years, but they were sufficient to be lauded by contemporary chroniclers. One writer makes the exaggerated statement, *Omnes novae forestae per Angliam sunt deforestatae*.[15] Another describes in glowing terms the benefits derived by those fortunate enough to dwell in such districts: "The king's commands being soon fulfilled, although not without great opposition, each and all put their liberties into practice, selling the produce of their own woods, making essarts, hunting game, ploughing the land which was before uncultivated, so that all did as they chose in the deforested woods; and not only men but dogs also, who used formerly to be footed, enjoyed these liberties. In short, the nobles, knights, and free tenants took advantage of these liberties, so that not one iota contained in the king's charter was omitted."[16]

In 1227 when the young king, now fully of age, took the government into his own hands, there was a sudden change of policy. Roger of Wendover states that Henry actually annulled the Forest Charter.[17] As a matter of fact, the king had not repudiated his charter, but interpreted it much more narrowly than had the baronial regents. He claimed that the districts afforested by Henry I, freed from the forest jurisdiction in the anarchy of Stephen's reign, and re-established by Henry II, were not to be disturbed; the clause of the charter—*omnes foreste quas Henricus avus noster afforestavit*—was intended to apply only to new afforestations.[18] Perambulators were ordered to show by what warrant they had disafforested lands afforested before the coronation of Henry II, and by what warrant they had afforested demesne woods, expressly exempted by the charter. In the next two years results of perambulations were examined, approved in some counties, and corrected in others, until the boundaries of the forest were definitely set according to the king's interpretation. Whatever the justice of his position,[19]

[14] *C. P. R.*, 1216-25, pp. 575-76.

[15] *Ann. Tewksbury*, p. 68.

[16] Roger of Wendover, 2:459.

[17] *In eodem itaque concilio idem rex fecit cancellare et cassare omnes cartas in provinciis omnibus regni Angliae de libertatibus forestae, postquam jam per biennium in toto regno fuerant usitatae.* Matt. Par., 3:122.

[18] Petit-Dutaillis, The Forest, p. 214-17.

[19] Cf. Turner, xcviii-xcix, "It is not surprising that the young king on attaining his political majority, challenged some of the disafforestments which had been made pursuant to the Charter, during his infancy. Vast tracts of land had been put out of the forest at a time when he had no power to grant a market, a fair, or even an acre of land to a man and his heirs. Disafforestment, resulting as it necessarily did in loss of fines, amercements and other profits, was from its very nature, an act of disinheritance. In many cases there was good reason for believing that portions of the forest had been wrongly disafforested."

inhabitants of the disputed districts were greatly disappointed to have to return within the hated forest jurisdiction. They did not accept the royal interpretation as justified, and continued to look to the charter for ultimate relief.

Disputes over various local districts continued. The sheriff of Southampton was censured for telling knights and free tenants of one of the areas contested in 1227, that now (after the confirmation of the Charters, 1237) they were free to do as they liked in their woods. They had eagerly availed themselves of their new privileges by taking game and supplies, only to have their sheriff ordered by the king to revoke his proclamation and forbid further encroachments.[20] The status of some districts was settled by issuing writs of disafforestment to individuals or groups.[21] Such grants, of course, were very limited, and did not in any sense fulfill the promises of the charter in popular estimation. The barons recurred to the king's bad faith in their petition of 1258, complaining of those districts already once disafforested "through the perambulation of lawful men, and reafforested at the will of the king."[22]

Edward I was described by a contemporary chronicler as one "who derived great pleasure from hawking and hunting, and had a special joy in chasing down stags on a fleet horse and slaying them with a sword instead of a hunting spear."[23] His love for the sport, together with his constant financial difficulties, made him quite as reluctant as his father to permit any curtailment of the forest, but the unfulfilled promise of the charter still afforded a basis for popular demands. In 1277 Edward issued orders for a perambulation of the forest south of Trent, affecting eighteen counties, possibly as a result of the confirmation of the Charters the year before. These orders provided, however, that nothing was to be done until the king had received the reports of the commission and authorized action upon them. Apparently no such authorization was given. In the case of Exmoor forest, for instance, the jurors declared that more than half the district ought to be disafforested, but there is evidence that Edward retained this forest

[20] *C. R.*, 1234-37, p. 541.

[21] In 1232 the results of a perambulation in Nottingham were confirmed to *omnibus manentibus in partibus predictis deafforestatis;* the charter was to be read in full county court and observed. *C. R.*, 1231-34, p. 86.

In 1234 a district between the Ouse and the Derwent in York, which had been in question as early as 1220 (Petit-Dutaillis, *op. cit.*, p. 215, note 4) was to be disafforested as granted the archbishop of York, Robert abbot of St. Mary's of York, earls, barons, knights, freemen, and all others, as well clergy as laymen, having lands between the Ouse and the Derwent in the county of York. *Ibid.*, p. 477.

Cf. also *C. R.*, 66, m. 21.

[22] *Item petunt remedium quod bosci et terrae infra metas forestae non existentes, qui per ambulationem proborum hominum, et per quindecimam partem omnium bonorum hominum Angliae domino regi datam, deafforestari fuerunt, per voluntatem suam reafforestavit. Select Charters*, p. 374.

[23] Quoted, Tout, *History of England*, p. 136.

in its entirety.[24] There was much to be said on the king's side: the findings of the jurors were not apt to be historically correct after so many years; they were sure to err on the side of too sweeping claims for disafforestment.[25]

It was in the years 1297 to 1301 that the great struggle over the forests took place. Interest in the Forest Charter played no small part in winning from Edward a confirmation of the Charters in 1297. As a result of the *Confirmatio* of that year, six justices were appointed for perambulations both north and south of the Trent, but with the reservation that the perambulation of Henry III's reign was not to be challenged. These orders of October were superseded next month by others containing no such reservation. Perambulations were carried out in Hampshire and Somerset, and possibly elsewhere, but no disafforestments resulted. It was to put pressure upon the king in the matter of disafforestment that the earls of Hereford and Norfolk held up the Scottish campaign in 1298.[26] The same issue was uppermost in the parliament of March, 1299, when the king granted the perambulation, only to nullify its value by concluding his concession with the phrase, *salvo jure coronae nostrae*.[27] Even when the threats of the angry magnates secured more liberal promises,[28] Edward put them off all summer on the grounds that he had other business to attend to first.[29] Five justices made perambulations in five counties, but their work was apparently too slow. April, 1300, six sets of justices were appointed, each in a particular group of counties, but the appointing letters contained the same reservations as the statute of Fines. The perambulators, however, paid no attention to the boundaries as settled under Henry III; they would have disafforested vast tracts of land which had been under the forest jurisdiction for a hundred and fifty years. They based their decisions on " 'tales of their ancestors and the common talk of the country.' "[30] At the Lincoln Parliament of January, 1301, Edward was forced by the barons to confirm the results of these perambulations, extensive though they were. The Charters were confirmed February 14, and letters issued permitting the disafforestments. But a second time, districts once disafforested were to be returned

[24] Petit-Dutaillis, *op. cit.*, pp. 218-19.

[25] Turner, *op. cit.*, pp. cii-ciii.

[26] *Flores Hist.* 3:297; Walter of Hemingburgh, *Chron.* 2:174; *et al.*

[27] The statute of Fines issued, contained all but the first five articles of the charter; the king declared he was willing that the perambulations be made, however, "saving always his oath, the right of his crown, and his exceptions and challenges and those of other persons" but "so that such perambulation be reported to him before any execution or anything else be done thereupon"; Turner, *op. cit.*

[28] *Absolute omnia sunt concessa,* Trevet, *Ann.*, p. 376; *rex quasi omnia petita concessit.* Walter of Hemingburgh, *Chron.* 2:183.

[29] His letter of apology, promising that the perambulations will be carried out in the fall is given *Liber Custumarum* 2:197-98; *C. P. R.*, 1292-1301, p. 424.

[30] Turner, *op. cit.*, p. cv.

to the forest, for in 1305 Edward was released by papal bull from his oaths of confirmation, and by the *Ordinatio Forestae* of 1306 undid the work of 1301.[31]

In the reign of Edward II, especially while the barons were in control of the government, disafforestment proceeded on the lines laid down by the charter, and mapped out in the perambulations of the reign of Edward I. This work was probably not completed until early in the reign of Edward III. The disafforestments of the thirteenth and fourteenth centuries, slow and grudging though they had been, were undoubtedly due in large part to the Forest Charter, which furnished a permanent written basis for popular claims. Most of the orders relating to disafforestment sent out by the government mention the charter. Contemporary chroniclers' accounts of the struggle for disafforestment, 1227 and 1297-1301, very clearly impute to the king bad faith in not living up to its promises. In the perpetuation of the document, this pledge, and the very delay in its fulfilment thus played an important part. Inhabitants of the forest districts could not lose interest in a document which promised so much.

Amelioration of the Forest Law; Restrictions on the King's Officials

To those who could not hope to be freed entirely from the forest jurisdiction, provisions of the charter modifying the old forest code, and restricting the king's officials, were of the greatest importance. The king had less reason to oppose the observance of such provisions, except that they did tend to limit his revenue; but even with the royal good will it was very difficult to enforce the charter. Foresters and their underlings continued their malpractices, sometimes to the king's advantage, often to their own.[32] Thus, throughout the period, the Forest Charter served as a basis for complaints against the king and his agents.

As early as 1219 the regents found it necessary to censure four foresters at the complaints of men of their districts. These officials were accused of many grievances and oppressions, *contra libertates in carta de libertatibus foreste*. The one offense described in detail involved violation of article 6, which regulated the footing of dogs. The mutilation of the forepaws of dogs, lest they pursue or attack game, was a grievance which had especially touched the lower classes, for "if his dog could still trot, however haltingly," the unscrupulous forester would confiscate a man's most valuable possession, his ox, instead of a reasonable fine.[33] Article 6 prescribed that

[31] For the bull see *New Rymer*, Vol. 1, Part 2, p. 978; for the *Ordinatio Forestae*, *Statutes of the Realm* 1:149.

[32] For a description of these see Petit-Dutaillis, *op. cit.*, pp. 200, 203-4; Matt. Par. t., 2:61-62; *et al.*

[33] *Ibid.*, p. 189.

footing be restricted to the districts where it was practiced at the accession of Henry II; it was to be performed according to rule, and inspected by a jury of "lawful men" at the time of the regards every three years; no more than a three-shilling fine was to be imposed, and the confiscation of a man's ox was expressly forbidden. The offenders of 1219 had violated all of these regulations. The king's order quotes the substance of article 6, and warns against this and other violations in the future.[34] Complaints of illegal footing of dogs, contrary to the charter, were made by the people of Somerset in 1279,[35] and by certain men of York in 1305.[36] Suit was brought against a forester of Southampton, 1294, by two men of the king's manor of Basingstoke, because he had required chiminage and the footing of dogs from them, *contra forman carte regis Henricis patris regis nunc.*[37]

Shortly after the reissue of 1225 a certain Richard de Borewell of Nottingham profited by article 15 of the charter, which provided for receiving back into the king's peace all those outlawed for forest offenses between the coronation of Henry II and the first coronation of Henry III. The sheriff was ordered to return to Richard his confiscated estates.[38]

Three years later (1229), as a result of numerous complaints, Brian de l'Isle and other justices of the forest were reminded of the privilege exempting those outside the forest from attending pleas unless concerned in them (article 2). On this occasion the order of censure assumes a tone of righteous indignation, explaining that since the king has granted these liberties by his charter, and "sworn in his soul to maintain them," his officials must do their part.[39] Like disafforestments, this privilege, too, was sometimes granted or reconfirmed to individuals or groups by private charter.[40] Its popularity may be explained on the same grounds as that of article 35 of the Great Charter, regulating the holding of county court and tourns. Professor Turner suggests that exemption probably extended to the court of attachments as well as to the pleas of the forest held before justices itinerant.[41]

[34] *Rot. Litt. Claus.* 1:433-34.

[35] See *infra*, p. 90.

[36] *Memorando de Parliamento*, p. 20.

[37] It is possible, though not likely, that these men were appealing to a private charter: *pro eo quod exigebat de eis chiminagium et expeditatus canum contra formam carte regis Henricis patris regis nunc. Placitorum Abbreviatio*, p. 291.

[38] *Rot. Litt. Claus.* 2:113.

[39] *Royal Letters* 1:359-60.

[40] *C. P. R.*, 1247-58, p. 83.

[41] The court of attachments met every forty-two days. It was summoned by the justice of the forest and dealt with small pleas of the vert. The "pleas of the forest," were held by the itinerant justices on their iters. The term used in article 2 of the charter—*justiciariis nostris de foresta*—might have included both classes of officials; Turner, *op. cit.*, xxxv-xxxvi; lvi-lvii; see also pp. l-lxxv.

The Forest Charter, like Magna Carta, explicitly or implicitly sanctioned the king's rights. Inasmuch as it defined, it also restricted, privileges granted the forest inhabitants; even the king then, might appeal to the charter when these privileges were exceeded. As noted above, the king interpreted article 1 in his own behalf, and insisted on preserving his own demesne woods, as the charter specified. It also proved necessary for Henry III to reaffirm article 11 to check the eagerness of his barons in overstepping their hunting privileges. The right granted archbishops, bishops, earls, and barons, of taking one or two head of game when passing through the forest offered great temptations. Article 11 of the 1217 text had provided simply for the taking of one or two head of game by anyone "who shall pass through our forest." In the revision of 1225 this clause reads,[42] "anyone who shall pass through our forest, coming to us at our summons," thus limiting the privilege to the infrequent intervals at which the barons answered the king's summons (a bride to secure attendance perhaps), and precluding the possibility of a journey undertaken expressly as a hunting trip. In 1238, orders were sent to twenty-three counties and thirty-two individuals, apparently forest officials, enjoining strict limitation of the privileges.[43] Article 11 is quoted *verbatim*, except that the *unam vel duas bestias* is changed to *unam bestiam*. The king complains that persons have "taken beasts in our forests when not coming to us nor summoned by us," and even linger three or four days in the forest "to our harm and the destruction of our forest." Such practices are to be strictly prohibited by proclamation made in towns and at fairs, and the names of offenders sent up to the king. These instances, of course, indicate not only a certain publicity given the charter through the king's use of it, but the great eagerness of the people to make the most of any forest privileges granted by it.

The letters for commissions of perambulation issued in 1277 and 1279 command observance of all articles of the Forest Charter, but apparently with little effect. In 1279 the people of Somerset drew up an elaborate petition of grievances, detailing the abuses of local officials in flagrant violation of the charter. The situation in Somerset as revealed by this petition must have been more or less typical of that in other forest districts. The petitioners quote the substance of the provisions violated (articles 1, 3, 4, 6, 7, 8, 14) and in each case contrast with the rules of the charter, the practices of their officials. These grievances not only give a remarkably complete and vivid picture of the annoyances to which inhabitants of the forest were subjected, but display an accurate knowledge of the contents of the charter, and belief in its value as a remedy for these ills. Incidentally the authors of the petition cleverly insinuate that since the king derives no

[42] *Statutes of the Realm* 1:27.

[43] *C. R.*, 1237-42, pp. 138-39.

profit from most of these practices, he ought the more readily to prohibit them.[44] No more convincing proof of the lasting practical value of the Forest Charter and the popular desire for its observance could be desired.

Close Connection between Magna Carta and the Forest Charter

In the case of the Great Charter, it was those provisions which had some practical bearing on everyday life which were most valued. The articles of the Forest Charter were all of this immediate practical character and were all specific and concrete in tenor. Because it offered great expectations of disafforestment and amelioration of abuses within the forest, the charter was highly valued and hence perpetuated throughout the thirteenth century and beyond.[45] As an offshoot of Magna Carta (an expansion of articles 44, 47, and 48 of John's Charter) the Forest Charter was constantly associated with it. The two documents were always confirmed together. Orders for publication and enforcement applied equally to both.[46] In popular complaints and demands for confirmation, the Forest Charter is sometimes mentioned first, as if of primary importance, or its value otherwise emphasized. Interest in the Forest Charter in the period 1297-1301 has already been noted; there are plenty of illustrations in the earlier years of the century.[47] The buying of confirmations—redemption of the liberties by special aids to the king—included those of the Forest Charter. This is made clear by the mention of both Charters in connection with the bargain transactions of 1225, 1237, 1297, and 1300. In addition there are special references to the "buying" of the forest liberties.[48] An interesting illustration

[44] For the full text of this document, see Note A at the end of this chapter.

[45] The forest did not entirely disappear until the seventeenth century. Petit-Dutaillis *op. cit.*, pp. 239-45.

[46] See Chapter 7 and Appendix C.

[47] Note for instance, such phrases as the following:

Tam carta nostra de foresta quam alia carta de libertatibus. *C. R.*, 1234-37, pp. 544, 546, 556.

Cartas de libertatibus tam de foresta quam aliis. *Rot. Litt. Claus.* 1:377.

Sed pro dolor! aggravatum est jam jugum servitutis, et maxime de foresta fit novissimum pejus priori. *Ann. Waverly*, p. 311 (1232 reference to issue of Charters in 1225).

Et dominus rex nunc venit, ut dicitur, contra dictam chartam libertatis, et maxime in articulo de forestis, ut nunc factum est in diocesi Wintoniae coram justiciariis forestae, et in aliis articulis pluribus. *Ann. Burton*, p. 254 (1237).

Instances of reference to *chartis suis*, or *cartis communium libertatum Anglia et de foresta*, etc., are, of course, very numerous.

For instances of the intense interest in the Forest Charter in the years 1296-1301, see Rishanger, *Chronica*, p. 186; Trivet, *Ann.*, pp. 371-72; Walter of Hemingburgh, *Chron.* 2:152, 155, 174, 186; *Flores Hist.* 3:295-96, 297; *et al.*

[48] The Petition of the Barons, 1258, article 7, evidently refers to the *fifteenth* of 1225: *Item petunt remedium quod bosci et terrae infra metas forestae non existentes, qui per ambulationem proborum hominum, et per quindecimam partem omnium bonorum hominum Angliae domino regi datam, deafforestari fuerunt, per voluntatem suam reafforestavit.* *Select Charters*, p. 374.

Pierre Langtoft states that the *fifteenth* of 1300 was granted "in exchange for well-confirming the charter of liberties without abating anything, and for fixing exact bounds for the perambulation through the kingdom, without sparing anyone" . . . *Chronicle*, p. 335.

of the close association of the two documents in popular conception is found in the wording of a petition of 1290 from the county of Southampton offering the king twenty marks: *quod Rex velit quod Magna Carta teneatur de articulis Foreste.*[49]

The value which was set upon the smaller document must have reflected favorably upon the Great Charter. The inhabitants of the forest swelled the ranks of the baronial and ecclesiastical opposition, and helped to perpetuate the Great Charter of common liberties because of their intense interest in the charter of the liberties of the forest.

NOTE A

Grievances Against the Charter of the Forest [1279][50]

"Whereas our lord the king wishes and has commanded and caused to be published by his council that the charter of the forest be observed in all respects in all its articles without blemish, these are the grievances, whereby the people and the commonalty of the forests in Somerset feel themselves aggrieved against the charter.

1. "Although the charter says that all the forests which king Henry grandfather of the king Henry the son of king John afforested are to be viewed by good and lawful men, and if he has afforested any wood other than his own to the damage of him to whom the wood belongs, it is to be disafforested; and that all the woods which were afforested by king Richard or by king John before the first coronation of king Henry father of our lord the king Edward are to be disafforested, yet they still remain in the forest against the charter to the grievance of the country. The above are the ancient bounds in the time of king Henry the father of the king Richard and the king John, as the perambulation of the aforesaid forests tells us, from bound to bound. And all the woods, which are outside, to the grievance of the country and most sinfully have been afforested, for the king has outside no demesne and no profit; moreover the country is surcharged thereby most grievously with foresters and their pages and their horses, although the chief forester ought to be charged with them in return for the lands and tenements which he holds of the king.

2. "And though the charter says that archbishops, bishops, abbots, priors, earls, barons, knights and free tenants, who have woods in the forest, may have their woods as they were at the time of the first coronation of the king Henry father of the king Richard and John, so that they may be quit for ever of all purprestures wastes and assarts made in those woods since that time till the commencement of the second year of the coronation of the king Henry the son of king John, yet at every eyre of the justices of the forest are the people who have woods in the forest grievously punished for purprestures wastes and assarts of the aforesaid time.

3. "Although the charter says that view of the lawing of dogs ought to be made every third year, when the regard is made, and then by view of loyal men and good, and not otherwise, yet the foresters come through the towns blowing horns and make a nuisance with much noise to cause the mastiffs to come out to bark at them; and so they attach the good folk every year for their mastiffs if the three toes be not cut and a little piece from the ball of the right foot, although the charter says that the three toes are to be cut but not the ball of the fore foot.

[49] *Rot. Parl.* 1:55. In 1305 a petition from a certain district in York protested against lawing of dogs *encountre la chartre nostre seygnur le Roy;* the brief Latin transcription of the clerk, however, says, *contra formam magnae cartae. Memorando de Parliamento,* p. 20.

[50] Turner, *op. cit.,* pp. 125-28.

4. "Although the charter says that by view and by oath of twelve regarders, when they make their regard, as many foresters are to be set to guard the forest as to them shall seem reasonably sufficient, yet the chief forester sets foresters beneath him, riding and walking, at his pleasure without the view of anybody, and more than are sufficient to guard the lawful forest, in return for their giving as much as they can to make fine for having their bailiwicks, to the great damage and grievance of the country because of the surcharge of them and their horses and their pages, although the king has no profit and no demesne, except one wood which is called Brucombe in Selwood; and he takes there for herbage of that wood from the neighboring towns sometimes two shillings, sometimes three shillings, or sometimes four shillings, although no money ought to be taken for herbage according to the charter.

5. "Although the charter says that no forester or beadle shall make scotale or collect sheaves or oats or other corn, or lambs or little pigs, or shall make any other collection, yet the foresters come with horses at harvest time and collect every kind of corn in sheaves within the bounds of the forest and outside near the forest, and then they make their ale from that collection, and those who do not come there to drink and do not give money at their will are sorely punished at their pleas for dead wood, although the king has no demesne; nor does anyone dare to brew when the foresters brew, nor to sell ale so long as the foresters have any kind of ale to sell; and this every forester does year by year to the great grievance of the country.

6. "And besides this they collect lambs and little pigs, wool, and flax, from every house where there is wool a fleece, and in fence month from every house a penny, or for each pig a farthing. And when they brew, they fell trees for their fuel in the woods of the good people without leave, to wit, oaks, maples, hazels, thorns, felling the best first, whereby the good people feel themselves aggrieved on account of the destruction of their woods; nor does any free man dare to attach any evil doer in his demense wood, unless it be by a sworn forester. After harvest the riding foresters come and collect corn by the bushel, sometimes two bushels, sometimes three bushels, sometimes four bushels, according to the people's means; and in the same way they make their ale, as do the walking foresters, to the great grievance of the country."

THIS IS THE PRESENTMENT OF THE FOREST OF MENDIP OF THEIR GRIEVANCES

7. "Although the charter says that no swanimote henceforth is to be held in the realm, except three times a year, to wit, at the beginning of the fifteen days before the feast of St. Michael, when the agisters meet to agist the demesne woods of the king, and about the feast of St. Martin, when the agisters ought to receive the king's pannage, and that at these two swanimotes the foresters, verderers, agisters, and none other shall come by distress, yet the chief forester comes and causes all the free tenants within the forest to be summoned to come before him, and from each town four men and the tithing man, and if they do not come they incur defaults to the great grievance of the country, although the king has no demesne and has no profit from those defaults. And the third swanimote ought to be held at the commencement of the fifteen days before the feast of St. John the Baptist for the fawning of the king's beasts; and to hold this swanimote the foresters and verderers shall come and none others by distress. And yet the forester makes the summons, and people incur defaults, as is before said. And besides this every forty days throughout the year the summons is made of the free men and townships, as is before said, outside the king's demesnes to the great grievance of the country; and he says that they come to make inquests, although there is no beast dead or

maimed, nor any lawful indictment by a forester or any other certain man according to the assize of the forest.

8. "Although the charter says that no forester who is not a forester in fee rendering farm to the king for his bailiwick ought to take any chiminage in his bailiwick, yet the foresters of Mendip and of Selwood in Somerset render no farm to the king nor take chiminage, but they take worse, whereby the country feels itself aggrieved, without the king having any profit, for it is outside his demesne; for they attach every man, rich and poor, dwelling within the forest, with dead wood and with dry wood; and from the poor they take from every man who carries wood upon his back six pence, and from the rich as much as they have fortune to make fine. The foresters riding and walking, and their pages take likewise with respect to a cart two shillings, three shillings, four shillings, from some more and from others less, according to their means, and from a horse which carries a load twelve pence, eighteen pence and sixteen pence to raise their fine which they have made with their chief forester, to the great destruction of the forest of the king, and to the grievance of those who have woods in the forest, for they suffer the carriers to go quit all through the year without attachment and yet the king has no profit.

9. "Although the charter says that nothing shall be taken except from those who carry wood outside the bailiwicks of the foresters, and that nothing shall be taken from those who carry upon their backs wood, bark, or charcoal even though they live thereby, and though the charter says that no chiminage is to be given except from the demesne wood of the king, yet where the people rest with their wood or timber and unload it from carts outside the close of the franchise of the Charterhouse among the towns, and afterwards take up their loads of this same wood or timber, the foresters attach them and amerce them grievously at their will and without right."

Exmoor

10. "The foresters attach likewise the good folk in their demesne woods and in their demesne lands and amerce them grievously and the small folk they attach at their homes and in their enclosures and in their crofts among the towns; and the men who work in their waste ground making 'hoes' to sow corn, although the king has no demesne, these their foresters attach to come before them; and they say that they have made waste and purpresture, if they do not their will, for having peace; and from each man holding land they will have the skin of a lamb or a farthing; and they say that that is their fee.

11. "And if a man bring the timber of a house a hundred years old, be it more or less, from one place to another, from whatsoever place it come, without or within the forest, or an old chest without iron, or a pair of wheels for a wagon or a cart, as merchants are wont to do to a fair, from whatsoever place they come they attach them in the middle of the king's highway and sometimes in the middle of the market as if for chiminage until they have made fine at their will, whereby the country feels itself much aggrieved. And they pray our lord the king that all such things and grievances may be amended, seeing that the king from such things has no profit."

CHAPTER VII

OFFICIAL TREATMENT OF THE CHARTERS: PUBLICATION AND ENFORCEMENT

Publication

The extent to which the Great Charter was known, in name at least, must have been increased by the dramatic events of its origin: the scene at Runnymede where the "liberties" were forced from a reluctant sovereign; the annulling of the Charter by the pope; the recourse to civil war to maintain the liberties, even to the calling in of the French prince and his army; finally the death of the tyrant and defeat of the invader; the crowning of the boy king, and the reissue of the liberties in a revised Charter, sanctioned by the pope, sealed by his legate, and protected by the anathemas of the church. It all made a good story, one which lost nothing in the telling as time went on.[1] The fact was not soon forgotten that these were the liberties for which a war had been fought.[2]

Knowledge of the Charter was not confined to England. The liberties, with slight changes, had been confirmed to Ireland. John's messenger in Rome at the time of the Lateran Council had made known "certain iniquitous laws and liberties," and had laid before the pope, "certain chapters of the aforesaid charter, reduced to writing."[3] Prince Louis probably confirmed the Charter. He knew of the promised confirmation at the time of the Treaty of Lambeth. In 1223, when accused of violating this treaty, Louis reproached Henry III with not having kept the liberties which had been sworn to by all at the time of his withdrawal.[4]

Publicity for the Charters must have been secured incidentally whenever the enforcement or interpretation of some particular provision was raised. Special orders to the sheriffs such as that of 1234 relating to article 35, appeals in the courts, interpretation before the king's council—all such incidents must have served to emphasize the connection between any coveted privilege or procedure, and the great document which insured it. In addition to this incidental publicity, official treatment of the Charters did much

[1] Matthew Paris, who began in 1235 his work on the chronicle which Roger of Wendover had carried to that date, makes additions to the work of his predecessor. In his record of events, 1215-16, his interpolations increase in odium the character of John, the interference of the pope, and the ravages of the war. Matt. Par., 559, 565, 611-12, 645-46, *et al.*

[2] *Et maxime leges quae continentur in cartis patris sui Johannis, scilicet in cartis de communibus libertatibus et carta de foresta . . . pro quibus in werra regnum fuerat perturbatum . . .* Bartholomew Cotton, pp. 105-6.

The war of 1215-16 was frequently used in dating events; see *Rot. Litt. Claus.* 2:65, 109, 130, 176, 184, 197, *et al.*

[3] Matt. Par., 2:616.

[4] *Ibid.*, 3:78.

to make known the documents and their contents, and to enhance their importance in popular estimation.

Treatment of Magna Carta differed from that of earlier charters. A copy of the Charter of Henry I had been sent to each shire where it was to be kept in the most important cathedral church or abbey. The same procedure was probably used in regard to Stephen's charter of 1136, although there is less evidence that this was done; the provisions of Stephen's charter did not become well known. No orders appear in the records for proclaiming or reading these charters.[5] In 1215 copies of Magna Carta were sent to the counties to be kept in cathedral churches or abbeys; but these copies were accompanied by letters patent to the sheriffs instituting an "inquiry into evil customs," and commanding enforcement of the Charter, "which we command be publicly read throughout your whole balliwick."[6] This was the first order for a public reading.

The same procedure was followed in respect to the revisions of 1216, 1217, and 1225.[7] In 1237, only the *parva carta*, confirming the Charters, was ordered read in country court.[8] The Charter was read at the time of pronouncing the formal sentence of excommunication against violators of the Charters in 1253. This sentence was to be made public throughout the land. After Innocent's confirmation of the sentence reached England, the clergy were instructed to proclaim it, together with the papal confirmation.[9] The sentence was repeated in 1255.[10] This year, if not in 1253, orders were sent to all the sheriffs commanding them to observe the Great Charter, and to have the same read in full county court.[11] The confirmation of 1265 prescribes "publication" of the Charters twice a year.[12] The confirmations of 1297 and 1300 were accompanied by explicit directions for reading the Charters.[13]

[5] Poole, Publication of Great Charters by the English Kings, *Eng. Hist. Review* 28:444-48.

Cf. Matt. Par., 2:117. *Factae sunt tot cartae quot sunt comitatus in Anglia, et rege jubente, positae in abbatis singulorum comitatum ad monimentum.* (Charter of Henry I.)

[6] *Quam eciam legi publice praecipimus per totam balliam vestram. Rot. Litt. Pat.* 1:180.

[7] 1216, *Rot. Litt. Claus.* 1:336; 1217, *ibid.*, p. 377; *New Rymer* 1, pt. 1:147; 1225, *Rot. Litt. Claus.* 2:70, 72, 73; Matt. Par., 3:91, 92.

An example of the order of 1225 is as follows: *Rex. Vic. Canteb. salutem. Praecipimus tibi quod perlecta in Comitatu tuo carta nostra de libertatibus concessa omnibus de regno nostro ea quae in illa contenta sunt; clameri facias et firmiter teneri in Ballia tua quantum ad te pertinet.*

[8] Orders to sheriffs, *C. R.*, 1234-37, pp. 421, 426, 451, 534. From a later order to the sheriff of Southampton, however, it would appear that here at least, the Charters were to be read: *quod tu, occasione cujusdam praecepti quod nuper tibi fecimus, quod scilicet cartam nostram tam de foresta, quam de aliis libertatibus in pleno comitatu legi et per totam balliam tuam teneri faceres, . . . Ibid.*, p. 541.

[9] Matt. Par. t., 3:25-26; *Ann. Burton*, pp. 320-22.

[10] Matt. Par. t., 3:125.

[11] *C. R.*, 69, m. 12d. Writ to sheriff of York and all others, *quod magnam cartam R. de libertatibus universitati Anglie concessis in pleno comitatu suo legi et libertates illas in singulis articulis suis . . .* etc.

[12] See *infra*, p. 96.

[13] See *infra*, p. 97.

Professor Poole finds it difficult to believe "that so long and technical a document as Magna Carta could have been actually read aloud in Latin in the county courts." He suggests that, in 1215, the procedure in the counties probably consisted simply of the oath-taking to the twenty-five barons, and the appointing of inquisitors. "No such conclusion, however, can be drawn from the mode in which Henry III ordered his first confirmation of the charter . . . to be proclaimed; for the writ which he issued to the sheriffs . . . contained only a command to cause the charter to be read in the county court and the liberties contained therein to be firmly observed." Professor Poole suggests, then, some such procedure as that adopted for the Provisions of Oxford. Orders were given for the reading, not of the document itself, but simply of a short proclamation supporting the elective council and its work. Inasmuch as this proclamation was to be read in the common tongue, Professor Poole thinks that the reading actually took place in this instance.[14] Yet it seems an unwarranted assumption that in the case of a brief document, the specific instructions of the government were carried out by the sheriffs, while in the case of the longer Charter of Liberties and of the Forest, equally specific instructions were disregarded.

The question arises, of course, what practical effect would be secured by reading the Charters in Latin to the average company of suitors at county court. Not until 1300 do the records state that the Great Charter was read *in English*. This reading of 1300, as described by the chronicler, took place in the great hall of Westminster before the archbishop and his clergy: the Great Charter, long desired, with all its articles, he ordered read before all who had come, *prius litteraliter, deinde patria lingua.*[15] The sentence of excommunication and papal confirmation of 1253 was to be read in both French and English;[16] the Provisions of Oxford, in English. The same may have been done in the case of the Great Charter before 1300, but this can only be conjectured. Reading in Latin, would have meant something to any clergy present, and must have been impressive, if not instructive, to the lay element.

In regard to publication of the Charters, Professor McIlwain argues that publication in the county courts was an important part of the authentication of statutes. "Only gradually did the theory arise that the whole of England was constructively in Parliament; that they were all assumed to be there consenting to what Parliament did." Again he says, "It is probable that some doubt existed in this period as to the reality of the assent 'omnium

[14] Poole, *op. cit., E. H. R.* 28:450.

[15] Rishanger, *Ann. Angliae et Scotiae,* p. 405. There are references to the reading of other documents in the *patria lingua* about this same time. *Ibid.,* p. 389; *Ann. Worcester,* p. 541; *Opus Chron.,* p. 24.

[16] *Ann. Burton,* p. 322.

utentium' unless a statute had been actually proclaimed throughout the realm."[17] Whatever part the theory of "assent" played in new legislation, it was evidently subordinate to that of securing *observance* in the case of the Charters.[18] Neither the provisions for publishing Magna Carta, nor similar orders in respect to private charters, mention securing recognition or assent. The command is always *clamari* (or *publicari* or *legi*) *et teneri facias*. It was advantageous to have a law or privilege well known; then violations could not be excused on the plea of ignorance, or claims based on fictitious grants. This purpose is expressed in connection with lesser enactments and private charters.[19] It is stated in some of the orders for publication of the Great Charter. The confirmation of 1265 provides for publication twice a year, *ne quis ignorantiam praetendere possit in futurum*. The same idea is expressed in the order for enforcement of 1297 and 1300. With this object of publication in mind, it seems all the more probable that some reading of the Charters actually took place.

Not until 1265 was publication in the county courts prescribed as a regular proceeding. The proclamation of peace sent to the sheriffs in that year provides for publication at least twice a year, in the first meeting of the county court after Easter and after Michaelmas.[20] Unfortunately there is little evidence of how well such an order was carried out in succeeding years, when there was no recent confirmation involved. The novel attempt at publicity for the Charter made by Archbishop Peckham in 1279, may indicate that the order of 1265 was not carried out year after year. In the Canons of Reading, the archbishop not only provides for excommunication of violators of the Charter, but orders that copies of the document, "well and clearly written," be posted in some prominent place in all cathedral and collegiate churches, the copies to be renewed from time to time.[21] The plan

[17] McIlwain, Magna Carta and the Common Law, *Commemoration Essays*, pp. 144, 169.

[18] The feudal theory of assent to new legislation would not apply here, as the provisions of the Charters, were considered old law and custom; charters to private individuals, too, of course, would not need the consent of others than those affected.

[19] Letters to all the sheriffs, accompanying the statute of Merton, conclude: *Et ideo tibi praecipimus quod omnia predicta in pleno comitatu tuo legi facias et decetero firmiter teneri; ne quis de comitatu tuo pro defectu tui in predictis casibus se possit per ignoranciam excusare.* *C. R.*, 1234-37, pp. 338-39.

When the archbishop of Dublin claimed rights of jurisdiction over certain citizens, they protested to the king: *dicit etiam dominus archiepiscopus ipsum habere cartam ex eadem libertate de dono Johannis . . . patris vestri. Sed quia de tali carta nunquam loqui audivimus, nec in terra nostra lecta fuit, nec usitata. Royal Letters* 1:109.

For illustrations of the order *legi facias et firmiter teneri*, applied to charters for individuals or small groups see *C. R.*, 1227-31, pp. 14, 22, 45, 280; 1231-34, 54, 58, 237, 476, *et al.*

[20] This order does not say *legi* but simply *publicari: contra quas ne quis ignorantiam praetendere possit in futurum, ad minus bis in anno, in pleno comitatu ipsas praecipimus publicari, . . . et sic deinceps fiat annuatim.* *Select Charters*, p. 406. Letters to the sheriffs, however, order reading of the confirmation of the Charters, *C. R.*, 82, m. 6d.

[21] Wilkins, *Concilia* 2:36.

must have been carried out in some churches, for Edward's order countermanding the canons provides, "Let Magna Carta be taken from the Church doors."[22] Provision for reading the Charters in the churches was made in the *Confirmatio* of 1297: "And we will that the same charters shall be sent under our seal to cathedral churches throughout our realm, and there remain, and shall be read before the people twice in a year.[23] It was probably in accord with this order that Archbishop Winchelsea caused the Charter to be published throughout his province. The document had already been read at the October meeting of the council at Westminster in which the *Confirmatio* was issued, and again at London.[24] At this time, too, the sheriffs of London received orders to publish the Charter throughout the city.[25] Walter of Heminburgh states that in 1299, when the barons were incensed at Edward's delay in carrying out any disafforestments, the king's counsellors, fearing an uprising, had copies of the Charters read publicly in St. Paul's cemetery before a large crowd of people.[26] The most elaborate provision for publicity was made in the *Articuli super cartas:* "And that the Charters be delivered to every Sheriff of England under the King's Seal, to be read four times in the year before the People in the full County: that is to wit the next County day after the feast of Saint Michael, and the next County day after Christmas, and at the next County day after Easter, and at the next County day after the Feast of Saint John."[27]

The whole policy of publication must have done much to bring the Charters to popular attention, and to acquaint the more intelligent elements in the community with their contents.

Methods of Enforcement

With the omission of article 61, and the abandonment of any such means of control as the committee of twenty-five barons, the revised Great Charter contained no provision for its enforcement, or for the punishment of violators. From 1216 on, however, the Charters received the protection of the church through the great excommunication; and of the state through the ordinary courts, or some special group temporarily constituted "preservers of the liberties."

1. *Protection of the church, excommunication of violators.*—The practice of excommunicating violators of the Charters, or of pronouncing in advance a general sentence of excommunication to be incurred *ipso facto* by

[22] *Ibid.*, 2:40; *C. R.*, 1272-79, p. 582.

[23] *Select Charters*, p. 492. Cf. also *New Rymer* 1, pt. 2:881.

[24] Pierre de Langtoft, *Chronicle*, p. 307; Bartholomew Cotton, p. 339.

[25] *New Rymer*, 1, pt. 2:879.

[26] Walter of Hemingburgh, *Chron.* 2:183.

[27] *Statutes of the Realm* 1:136. For orders to the sheriffs to this effect, see *New Rymer* 1, pt. 2:919.

all who should infringe them thereafter, seems to have remained the only permanent general measure of dealing with charter-breakers throughout the thirteenth century. At first thought, the practice of excommunicating violators of a royal charter so largely secular in its application seems peculiar. The practice may be explained partly by the events of 1216-17, partly by the interest of the church in the Great Charter. As described above, ecclesiastical and papal support of the young Henry III had taken the form of excommunicating his opponents. These included persons who did not accept the compromise offered in the form of the revised Charters of 1216 and 1217. In 1225 there were no groups in open revolt against the king. There were some malcontents, some turbulent spirits among the barons, royal officials who were not observing the Charters, suspicion that the king himself, on coming of age, might not abide by his promises. Hence the custom established under ecclesiastical direction in 1216-17 was continued. This time, the sentence, pronounced by Stephen Langton, was directed primarily against possible future violators of the Charters. It was repeated in connection with the confirmations of 1237, 1253, 1255, 1276, 1297, and 1300, and at other times during the century.[28]

Magna Carta, as the clergy interpreted it, really meant more to the English Church than any special papal or royal charter in their possession, for it guaranteed the sum total of all these, and other prescriptive and interpretative rights as well. It must be remembered, too, that the pope continued to look upon England as a fief of the Holy See. In the reign of Henry III, especially, papal direction in temporal affairs, persisted.[29] Furthermore, it was not uncommon for the clergy to excommunicate "disturbers of the king's peace." The clergy were guardians of the temporal, as well as the spiritual, welfare of the kingdom. It was customary for them from time to time to pronounce general formal sentences of excommunication in which were included a number of prescribed offenses. These were largely offenses against the canons and the liberties of the church, but some secular items were often included.[30] Such general sentences became somewhat stereotyped in form. Particular emphasis was put upon excommunication for any offense, when such a sentence had been sanctioned by the pope, or had been pronounced by some famous prelate, or upon some important occasion. Such was the sentence pronounced by Stephen Langton at the Oxford convocation of 1222 against all who should violate the liberties of

[28] See *infra*, p. 99, and Appendix C.

[29] Demonstrated in detail by M. Gasquet, *Henry III and the English Church.*

[30] For instance: *Item, omnes illos, qui pacem et tranquillitatem domini regis et regni injuriose perturbare praesumunt; et qui jura domini regis injuste detinere contendunt. Ex quo intellegimus excommunicari non solum guerrarum suscitantes horrorem, verum etiam latrones publicos omnes pariter et praedones, et quoscunque justitiae regni temere repugnantes;* Wilkins, *Concilia* 2:56.

the church. Such was the sentence against violators of the canons of the legate Cardinal Ottoboni, 1268. Such was the sentence against violators of the liberties of the church, and the liberties of Magna Carta and the Forest Charter, pronounced by Archbishop Boniface in 1253; sanctioned by Pope Innocent IV in 1254, and by Alexander IV in 1256.[31] From this time on, if not before, violation of the Charters was included as one of the offenses to be emphasized by the clergy in pronouncing their general sentences of excommunication.[32]

The government, of course, recognized these sentences, either by the presence of king and counsellors at the ceremony, or in some more formal way. In connection with the sentence of 1253, a warning was issued against any attempt to introduce changes into it for "the lord king, and the aforesaid magnates, and the whole community of the people protested publicly" in the presence of the archbishop and bishops, "that they had in no wise consented or would consent to any such, but flatly contradicted them."[33] The pronouncing of such sentences was formally prescribed in the *Confirmatio* of 1297: "and that all archbishops and bishops shall pronounce the sentence of great excommunication against all those that by deed, aid, or counsel do contrary to the foresaid charters, or that in any point break or undo them. And that the said curses be twice a year denounced and published by the prelates aforesaid."[34]

The effectiveness of this weapon as a preventative or penalty may be questioned. It was a failure as far as the king was concerned. In 1237 Henry III admitted that he himself had incurred the sentence of excommunication.[35] In 1244 the barons complained that he had paid "no regard to the oath he had taken," nor shown "any fear of the sentence pronounced by the holy man Edmund."[36] From time to time, Henry was supported by papal bulls, forbidding the clergy to excommunicate him, or his officials,

[31] *Ibid.*, 1:703-4, 730-31. Both of these papal confirmations quote *verbatim* the sentence of 1253.

[32] Several of these general sentences, as prescribed by archbishops or bishops to their local clergy are recorded in Wilkins' *Concilia:*

The constitutions of Richard Poore, *de sententia excommunicationis,* contain (in an insertion probably made after 1279 ?) *Item, excommunicantur ab omnibus archiepiscopis, et episcopis Anglie, qui veniunt contra magnam chartam domini regis, aut faciunt; quae sententia per sedem apostolicam pluries est confirmata.* Wilkins, *Concilia* 2:599-602.

An order of the bishop of Worcester, 1270, to the archdeacon, *de publicandis monitionibus et privilegiis ecclesiarum et clericorum,* in all collegiate and parochial churches within his archdeaconry, repeats the sentence of excommunication against violators of the Charters, 1253-54, *ibid.*, 2:23.

Sententia excommunicationis per Robertum Cantuar. archiepisc. lata contra occupatores bonorum ecclesiasticorum, et infringentes articulos chartarum; scil. magnae chartae, et chartae de foresta necnon contra detentores, et incarcerantes clericos. (1298), *ibid.*, 2:240-42.

[33] *New Rymer,* 1, pt. 1:290.

[34] Adams and Stephens, p. 87; see also Winchelsea's decree to the clergy, Wilkins, *Concilia,* pp. 240-42.

[35] Matt. Par. t., 1:45.

[36] *Ibid.*, 2:12.

directly.[37] The *Dunstaple Annnals* describe a case of excommunicating individual offenders for a specific offense: Roger, the prior of Christ Church, Canterbury, and those "by whose counsel the king despoiled him of the custody of the land of Ralph, son of Bernard, which belongs to his fief." But the chief offenders were exempted—*exceptis rege et regina, et comite Ricardo et S[tephano] de Segrave.*[38] The grievances of the clergy complain that the government releases excommunicated persons. When excommunication was used for secular offenses, and often against those that the government was glad to connive at, the weakness of the system is apparent. No doubt, some of the very persons released, "in contempt of the keys of the Church," were among the charter-breakers.

The clergy, however, continued to take the excommunication of violators very seriously.[39] In an age when the church still had a strong hold on men's lives and imaginations, the ceremony of excommunication must have been peculiarly impressive, and thus acted as a deterrent on some would-be violators. It is interesting to note that Archbishop Winchelsea recognized the value of the ceremonial side of the proceedings. In his letter to his clergy on the sentence of 1297, he orders them to use all ceremony and solemnity as this has more influence on the laity than the effect of the sentence.[40]

The ceremony of 1253 is described as follows:

> This third day of May in the great royal hall at Westminster, in the presence and with the consent of our sovereign Henry, the illustrious king of England, and of their highnesses . . . we B[oniface], by the divine mercy, archbishop of Canterbury and primate of all England, F., bishop of London . . . ,[41] clad in our pontifical robes, and with candles lighted, have solemnly pronounced sentence of excommunication, in the following terms, against all violators of the liberties of the Church, and of the liberties or free customs of the kingdom of England, especially those which are contained in the charter of the liberties of the kingdom of England, and in the charter of the forests. . . . "By authority of the Omnipotent God, and of the Son, and of the Holy Ghost, and of the glorious mother of God, the ever-virgin Mary, of the blessed apostles Peter and Paul, and all the apostles; and of the blessed archbishop and martyr

[37] *De Rege non excommunicando;* and *De non excommunicando, sine causa manifesta, Justiciarios, Vicecomites et Baiwos Regis. New Rymer* 1, pt. 1, 199, 200.

[38] *Ann. Dunstaple,* p. 150.

Perhaps, too, the evils which were becoming apparent at Rome and throughout the church and its organization, and the overuse which was made of excommunication, diminished respect for the church and its anathemas: In 1266, the story goes, "the legate, who was in the royalist camp, thought to awe the enemy into submission by the sentence of excommunication, whereupon one of the besieged clad himself in ecclesiastical robes, and from the castle wall solemnly excommunicated the king, and the legate and all their followers." Prothero, *op. cit.,* pp. 354-55.

[39] In the next century a certain John "de Burgo," chancellor of Cambridge, wrote in a treatise, *de sententia lata super Magnam Cartam et Cartam de Foresta Anglie.* He quotes the sentence of 1253, gives a résumé of the two Charters, and concludes: *Hos articulos ignorare non debent quibus incumbit confessione audire infra provinciam Cantuariensem.* Bémont, *op. cit.,* xlix, note 1.

[40] *Pulsatis campanis, et candelis accensis, ut propter solennitatem hujusmodi (quam laici magis quam effectum hujusmodi sententiarum attendunt) amplius timeatur.* Wilkins, *Concilia* 2:241.

[41] Here follow the names of twelve other bishops.

Thomas, and of all martyrs, of Saint Edward, king of England, and of all confessors and virgins, and of all the saints of God, we excommunicate, anathematize, and banish from the threshold of the holy mother Church, all those who shall by any arts or contrivances rashly violate, diminish, or change, privily or publicly, by word, deed, or counsel, the liberties of the Church, or the ancient and approved customs of the kingdom, and especially the liberties and free customs which are contained in the charters of the common liberties of England and of the forests, which charters have been granted by our lord the king of England to the archbishops, bishops and other prelates of England, the earls, barons, knights, and freeholders, by rashly contravening them, or any of them, in any article soever. Also, against those who shall promulgate, or, if promulgated, shall observe any statutes, or shall introduce, or, if introduced, shall observe any customs contrary to those liberties or their statutes; and against all writers of such statutes, as also the counsellors and executors of them, and who presume to judge according to them. And let all and singular the above-mentioned persons, who shall knowingly commit any one of the aforesaid offences, rest assured that they will incur this sentence by so doing; and those who shall through ignorance so offend, and shall not, on being warned thereof, reform, and give full satisfaction for their offences within a fortnight from the time of admonition, at the discretion of ordinary judges, shall, from that time, be included in this sentence. In this same sentence, also, we include all those who shall presume to disturb the peace of the king and kingdom. In lasting memory whereof we have affixed our seals to these presents." Then was brought before the assembly the charter of his father John in which he, the said king Henry, had, of his own free-will granted the aforesaid liberties, and was read to them.[42]

Whether or not the pious inclinations of the king were such that he was really impressed by the ceremony at this time, he had a faculty for lending himself well to a dramatic situation:

The king, as he listened to the above sentence, held his hand to his breast, and preserved a calm, cheerful, and joyful look, and when at the end of it they threw down the candles, which on being extinguished sent forth a stench, and each and all exclaimed, "Thus perish and stink in hell all who incur this sentence," the bells at the same time ringing, he thus spoke, "So help me God, all these terms will I faithfully observe, as I am a man, a Christian, a knight, and a crowned and annointed king." At the commencement of pronouncing this sentence, it should be remarked, lighted candles were given to all present, and when one was handed to the king, he took it but would not retain it, and handed it to one of the prelates, saying, "It is not proper for me to hold such a candle, for I am not a priest; the heart gives surer proof;" and for the rest of the time he held his open hand to his breast, until the sentence was ended.[43]

This sentence the bishop of Lincoln had repeated in each parochial church in his diocese. The next year, the sentence, together with the papal confirmation of it, was sent to the clergy throughout England for proclamation, *distincte et delucide in lingua Anglicana et Gallicana.* With the text of the proclamation were sent copies of the Charters from which other copies were to be made (and the original returned).[44]

[42] Matt. Par. t., 3:24-26.

[43] *Ibid.*, p. 26.

[44] *Ann. Burton*, p. 322.

This whole procedure of the great excommunication, then, familiarized the clergy with the text of the documents; it published abroad the names of the Charters in the impressive sentence which "aweth the heart, and whosoever heareth it, both his ears shall tingle." Some of the awe thus inspired must have been transferred from the sentence to the great document which occasioned it.

2. *Protection by the state.*—No formal pronouncement on the nature of secular punishment for violation of the Charters seems to have been made before 1265. In most cases, special methods of punishment were hardly necessary, for violations of those provisions of the Charter, classed as common law, would be dealt with in the appropriate feudal or royal court. This fact is evident from cases cited above in which appeals to the Charter were upheld in the courts. It is recognized in the *Confirmatio Cartarum:* "and that our justices, sheriffs, mayors, and other officials which under us have to administer the law of our land, shall allow the said charters in pleas before them and in judgments in all their points; that is to wit, the Great Charter as the common law and the Charter of the Forest according to the Assize of the Forest, for the relief of our people."[45] The same principle is expressed in the *Articuli super cartas,* but with the reservation that some parts of the Charters were not common law, and hence could not be upheld satisfactorily by the regular courts; and that adequate punishment for violators had not been provided heretofore: "Forasmuch as the Articles of the Great Charter of Liberties, and of the Charter of the Forest, . . . have not been heretofore observed or kept, because there was no punishment executed upon them which offended against the points of the Charters before mentioned; . . . And for these two Charters to be firmly observed in every Point and Article, where before no remedy was at the Common Law, . . ."[46] The difficulty in securing proper observance of the Charters led to two practices during the thirteenth century: first the custom of dealing with violators in the king's court; second, the creation, from time to time, of special committees to act as "preservers of the liberties."

The first practice, of course, was right in line with the whole development of the century in increasing royal jurisdiction. Threats of punishment of violators by the king's court are made in orders to the sheriffs, 1234, commanding observance of the liberties.[47] In connection with the sentence of excommunication pronounced in 1253, it is made clear that in addition to incurring this sentence, offenders are to be proceeded against in the king's

[45] *Select Charters,* p. 492.

[46] *Statutes of the Realm,* 1:136.

[47] *Et scias, et omnibus aliis de comitatibus tuis scire facias quod si quis contra easdem libertates venerit, per judicium curie nostre si inde convictus fuerit, nos ad eum graviter capiemus. C. R.,* 1231-34, p. 593; *Royal Letters* 1:455-56.

court.[48] A formal declaration to this effect appears in the confirmation of 1265.[49] Enforcement and punishment, either by the king, or by his officials, is provided by article 5 of the Statute of Marlborough: "The Great Charter shall be observed in all his articles, as well in such as pertain to the King, as to other; and that shall be inquired afore the Justices in Eyre in their circuits, and afore the Sheriffs in their Counties when need shall be; and Writs shall be freely granted against them that do offend, before the King, or the Justices of the Bench, or before the justices in Eyre when they come into those parts. Likewise the Charter of the Forest shall be observed in all his Articles, and the Offenders when they be convict, shall be punished by our sovereign Lord the King."[50] The confirmation of the Charters in 1301, provided that the kind of violation which consisted of making new enactments contrary to the Charters, was to be dealt with "by the common counsel of our whole realm."[51] A most novel procedure is that suggested by the author of the *Mirror of Justices:* since every free man possesses a "free tenement" in the liberties of the Charter, he ought to be able to recover any of them which he has been denied, by a process of *novel disseisin!*[52]

The second practice—creation of special groups to enforce the liberties and punish violators—was more or less a part of the whole constitutional struggle of the thirteenth century, the experiments in devising machinery of government to control the king. The twenty-five barons of article 61 were really "preservers of the liberties," although primarily against violations by the king. This committee, however, was not a judicial body; its weapons were confined to remonstrance and civil war. The plan of 1244 for a group of special counsellors to control the king, specified that these men were to be "preservers of the liberties": they were to be empowered to "hear the complaints of each and all, and, as soon as they can to afford relief to those who are suffering injury." One aim of the baronial government set up by the Provisions of Oxford was to secure observance of the Charters.

The most complete scheme, and most interesting because it was devised expressly for securing observance of the Charters, was that prescribed in the *Articuli super cartas:* "And for these two Charters to be firmly observed in every Point and Article where before no Remedy was at the Common Law, there shall be chosen in every Shire Court, by the Commonalty of

[48] *New Rymer* 1, pt. 1:290.

[49] *Et si quis contra cartas ipsas vel articulos praedictos in aliquo venire praesumpserit, praeter perjurii reatum et excommunicationis sententiam quae incurret, per considerationem curiae nostrae graviter puniatur. Select Charters,* p. 405.

[50] *Statutes of the Realm* 1:927.

[51] *New Rymer* 1, pt. 2:927.

[52] *Mirror of Justices,* p. 176.

the same Shire, three substantial Men, Knights or other lawful, wise, and well-disposed persons, which shall be Justices sworn and assigned by the King's Letters Patent under the Great Seal, to hear and determine without any other Writ, but only their Commission, such Plaints as shall be made upon any point contained in the foresaid Charters, in the Shires where they be assigned, as well within Franchises as without, and as well for the King's Officers out of their places as of others; and to hear the Plaints from day to day without any delay, and to determine them, without allowing the delays which be allowed by the Common Law. And the same Knights shall have power to punish all such as shall be attainted of any Trespass done contrary to any Point of the foresaid Charters, where no Remedy was before by the Common Law, as before is said, by Imprisonment, or by Ransom, or by Amercement, according to the Trespass."[53]

None of these schemes was permanent; other experiments followed in the next reign.[54] But publicity was given the Charters by these attempts. The very failure to secure adequate means of enforcement of the liberties necessitated the constant appeals to the documents, the repeated confirmations, which did much to perpetuate the Great Charter and its companion Forest Charter.

[53] "Nevertheless the King nor none of those that made this ordinance intend, that by virtue hereof any of the foresaid Knights shall hold any Plea by the power which shall be given them, in such case where there hath been Remedy provided in times past, after the course of the Common Law, by writ; nor also that any prejudice should be done to the Common Law, nor to the Charters aforesaid in any Point"; *Statutes of the Realm* 1:136-37. See *New Rymer* 1, pt. 2:919, for orders to the sheriffs; and *C. P. R.*, 1292-1301, for lists of knights appointed.

[54] "In 1311 the Ordinances also included the Confirmation of the Charters and the Ordinances themselves among the laws, the breach of which was to be tried by the barons in parliament; and in 1341 the peers wanted to include the 'liberties of holy church' and the Charter of the Forests"; Pollard, *op. cit.*, p. 97, note 1.

CONCLUSION

Any study of the first century of Magna Carta leaves questions still unanswered. An examination of further source material, especially the unpublished *placita* and *petitiones,* would probably yield additional evidence of the vitality of Magna Carta and the Forest Charter throughout this period. Even so, the source material has its limitations. Were there, in reality, many more appeals to the Charters which are not recorded? In the case of such appeals, were the documents so widely and well known that the injured parties readily looked to them for redress, or must some officious Theobald and Hugh, or one of the new class of advocates suggest the remedy? How much effect did confirmations and methods of enforcement have in actual practice in securing observance of the "liberties?" Was the Great Charter ever, in this early period, used as "an ancient and stirring battle cry," a challenge to an irresponsible monarch?

In spite of these limitations, some conclusions may be stated. It is impossible to attribute the perpetuation of Magna Carta to any single factor. Various elements, all more or less interrelated, played a part in establishing the Charter, and started it on its career of fame. The connection with the past—the fact that the Charter was largely a record of ancient liberties, the law and custom of the land—gave to it the sanction of custom and precedent, and invested it with something of the veneration accorded the "good laws" of King Edward. As fundamental law, written law, the first statute, a contract redeemed by purchase, it had both a legal and a political permanence. It was soon given a name the very connotation of which had its appeal. The official procedure of publication made known its contents and drew attention to their practical application. It received the protection of the state in the royal courts and of the church through the great excommunication. But it was impossible to secure perfect observance: violations of the Charter by the king and his officials, by foreign favorites and the greater English magnates, made repeated confirmation and emphasis necessary, and finally led to the practice of successive confirmations by Parliament.

The unusual circumstances of its origin made the Charter the embodiment of the great principle of limited monarchy. The text of 1215 afforded suggestion for later practical experiments in controlling the king. More important, in the century after 1215, was the lasting practical value of the document. It was a guarantee of certain coveted liberties—a guarantee in specific written form, which monarchs might evade, but could not gainsay. Articles of Magna Carta and the companion Forest Charter regulated matters of intense local interest, matters which nearly concerned the duties and

pleasures of everyday life. To bishop, priest, or monk, the Great Charter signified still more: it guaranteed his right to the privileges of his order and rank—the *libertates ecclesiae Anglicanae*—with all that these implied.

Whatever the intent of its framers, in actual practice throughout the thirteenth century, the Great Charter was not the narrowly feudal document that recent historians have made it. Neither was it as exclusive and selfish in its application as Professor Pollard implies when he says, "Medieval liberties were large but their recipients were few. They were the exceptions to the rule; it was because they were rare privileges and not common rights that the framers of Magna Carta set so much store upon liberties."[1] Just observance of feudal law, liberty of the English Church, mitigation of the intolerable forest jurisdiction, privileges for towns and merchants, sanction of the best, and restriction of the worst, features of royal justice—in the combination of all these factors lay the unique merit of the Charters. Characteristically medieval, they granted *liberty* to none, but some *liberties* to each class and group.

This unusual combination of many kinds and degrees of liberties in one document was due to the circumstances of its origin. Enough stress is not usually laid upon the extraordinary combination which formed in the winter and spring of 1215. When the church under Langton's lead, left the side of king and pope in spite of desperate bids and promises, and flying in the face of history and prejudice, allied itself with its natural enemies, the lay nobles; and when at the last moment the great economic center, London, willingly opened its gates to a feudal army, the traditional terror to all accumulators of property; things were happening which were to affect the whole future history of the world—things which could have happened nowhere but in England and which were conditioned upon nearly everything which was distinctive in England's past. It is not a matter of surprise that the document which resulted from this unprecedented union should have embodied something of the interests of all groups included in it. However soon the alliance might fall apart after 1215, however narrowly each group concern itself only with the enjoyment of its own liberties, there was one thing in which all had an interest, one thing on which all could and did reunite—the observance of Magna Carta. Only through such united opposition could this, or any other boon, be maintained against the king. The move for the confirmation of the Charters in 1297, like that which led to the grant of 1215, originated with a little group of insurgent barons. But one of the first measures of these "Northerners" of 1297 was to seek an alliance with the Londoners; and the influence of Archbishop Winchelsea and his clergy was no less influential than the threats of the barons in

[1] Pollard, *op cit.*, p. 171.

bringing the king to terms. In the last analysis, then, the Great Charter was perpetuated because it promised "present help for present ills" to all the articulate classes of the day. The result of unity, it was responsible for reviving and maintaining that unity in its own favor. In centuries to come it was capable of new interpretations to meet the needs of new groups and classes.

In practice, Magna Carta was not a "stumbling block to progress." Such provisions as were really reactionary enough to militate against the trend of the times, the development of the centralized state—article 24, the grant of liberty of the church, the blanket guarantee of all existing private liberties—were evaded. In sanctioning the best features of royal justice, the most potent centralizing force of the age, the Charter carried the remedy for its own weaknesses. Such of its clauses as were brief and general were early subjected to a process of reinterpretation. Begun before the thirteenth century closed, this process served at first only to keep up to date the liberties of certain groups. Continued in succeeding centuries by Parliament, that body whose function it was "to distribute and equalize liberty," reinterpretation, keeping pace with the times, gradually transformed the Charter of Liberties into a Charter of Liberty, for all Englishmen, "all English-speaking peoples of the world." But long before that time, while still a medieval Charter of Liberties, the great document had already gained the hold on the popular imagination which was to perpetuate it in succeeding centuries.

APPENDIX A

THE GREAT CHARTER OF HENRY III[1]

(Third revision, issued February 11, 1225)

Henricus Dei gratia rex Anglie, dominus Hibernie, dux Normannie, Aquitanie, et comes Andegavie, archiepiscopis, episcopis, abbatibus, *prioribus,* comitibus, baronibus, vicecomitibus, prepositis, ministris et omnibus ballivis et fidelibus suis *presentem cartam inspecturis,* salutem. Sciatis quod nos, intuitu Dei et pro salute anime nostre et *animarum* antecessorum et successorum nostrorum, ad exaltationem sancte ecclesie et emendationem regni nostri, *spontanea et bona voluntate nostra, dedimus et concessimus archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus et omnibus de regno nostro has libertates subscriptas tenendas in regno nostro Anglie in perpetuum.*

1 (1). In primis *concessimus* Deo et hac presenti carta nostra *confirmavimus* pro nobis et heredibus nostris in perpetuum quod anglicana ecclesia libera sit, et habeat *omnia* jura sua integra et libertates suas illesas. Concessimus etiam omnibus liberis hominibus regni nostri pro nobis et heredibus nostris in perpetuum omnes libertates subscriptas, habendas et tenendas eis et heredibus suis de nobis et heredibus nostris *in perpetuum.*

2 (2). Si quis comitum vel baronum nostrorum sive aliorum tenencium de nobis in capite per servicium militare mortuus fuerit, et, cum decesserit, heres *ejus* plene etatis fuerit et relevium debeat, habeat hereditatem suam per antiquum relevium, scilicet heres vel heredes comitis de baronia comitis integra per centum libras, heres vel heredes baronis de baronia integra per centum libras, heres vel heredes militis de feodo militis integro per centum solidos ad plus; et qui minus debuerit minus det secundum antiquam consuetudinem feodorum.

3 (3). Si autem heres alicujus talium fuerit infra etatem, *dominus ejus non habeat custodiam ejus nec terre sue antequam homagium ejus ceperit; et, postquam talis heres* fuerit in custodia, cum ad etatem pervenerit, *scilicet viginti et unius anni,* habeat hereditatem suam sine relevio et sine fine, *ita tamen quod, si ipse, dum infra etatem fuerit, fiat miles, nichilominus terra remaneat in custodia dominorum suorum usque ad terminum predictum.*

4 (4). Custos terre hujusmodi heredis qui infra etatem fuerit non capiat de terra heredis nisi rationabiles exitus et rationabiles consuetudines et rationabilia servicia, et hoc sine destructione et vasto hominum vel rerum; et si nos commiserimus custodiam alicujus talis terre vicecomiti vel alicui alii qui de exitibus *terre* illius nobis debeat respondere, et ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, et terra committetur duobus legalibus et discretis hominibus de feodo illo qui de exitibus nobis respondeant vel ei cui eos assignaverimus; et si dederimus vel vendiderimus alicui custodiam alicujus talis terre, et ille destructionem inde fecerit vel vastum, amittat ipsam custodiam et tradatur duobus legalibus et discretis hominibus de feodo illo qui similiter nobis respondeant, sicut predictum est.

[1] The following text (that of *Statutes of the Realm* 1:22-25) is Professor McKechnie's arrangement as given in his *Magna Carta,* pp. 497-508. Words in italics indicate those passages not to be found in the Charter of 1215, but introduced in 1216, 1217, or 1225. Numbers in parentheses refer to corresponding articles of John's Charter. For variations, 1216, 1217, and 1225. see footnotes given by Professor McKechnie, pp. 497-508, or Bémont, *Charters,* where a similar arrangement is given.

5 (5). Custos autem, quamdiu custodiam terre habuerit, sustentet domos, parcos, vivaria, stagna, molendina et cetera ad terram illam pertinencia de exitibus terre ejusdem, et reddat heredi, cum ad plenam etatem pervenerit, terram suam totam instauratam de carucis *et omnibus aliis rebus, ad minus secundum quod illam recepit. Hec omnia observentur de custodiis archiepiscopatuum, episcopatuum, abbatiarum, prioratuum, ecclesiarum et dignitatum vacancium que ad nos pertinent, excepto quod hujusmodi custodie vendi non debent.*

6 (6). Heredes maritentur absque disparagatione.

7 (7). Vidua post mortem mariti sui statim et sine difficultate *aliqua* habeat maritagium suum et hereditatem suam, nec aliquid det pro dote sua vel pro maritagio suo vel pro hereditate sua, quam hereditatum maritus suus et ipsa tenuerunt die obitus ipsius mariti, et maneat in capitali mesagio mariti sui per quadraginta dies post obitum ipsius mariti sui, infra quos assignetur ei dos sua, *nisi prius ei fuerit assignata, vel nisi domus illa sit castrum; et si de castro recesserit, statim provideatur ei domus competens in qua possit honeste morari, quousque dos sua ei assignetur secundum quod predictum est, et habeat rationabile estoverium suum interim de communi. Assignetur autem ei pro dote sua tercia pars tocius terre mariti sui que sua fuit in vita sua, nisi de minori dotata fuerit ad hostium ecclesie.*

(8). Nulla vidua distringatur ad se maritandam, dum vivere voluerit sine marito, ita tamen quod securitatem faciet quod se non maritabit sine assensu nostro, si de nobis tenuerit, vel sine assensu domini sui, si de aliquo tenuerit.

8 (9). Nos vero vel ballivi nostri non seisiemus terram aliquam nec redditum pro debito aliquo quamdiu catalla debitoris *presencia* sufficiant ad debitum reddendum *et ipse debitor paratus sit inde satisfacere;* nec plegii ipsius debitoris distringantur quamdiu ipse capitalis debitor sufficiat ad solutionem debiti; et, si capitalis debitor defecerit in solutione debiti, non habens unde reddat *aut reddere nolit cum possit,* plegii respondeant pro debito; et, si voluerint, habeant terras et redditus debitoris quousque sit eis satisfactum de debito quod ante pro eo solverunt, nisi capitalis debitor monstraverit se inde esse quietum versus eosdem plegios.

9 (13). Civitas Londonie habeat omnes antiquas libertates et liberas consuetudines suas. Preterea volumus et concedimus quod omnes alie civitates, et burgi, et ville, *et barones de quinque portubus,* et *omnes* portus, habeant omnes libertates et liberas consuetudines suas.

10 (16). Nullus distringatur ad faciendum majus servicium de feodo militis nec de alio libero tenemento quam inde debetur.

11 (17). Communia placita non sequantur curiam nostram, set teneantur in aliquo loco certo.

12 (18). Recognitiones de nova disseisina *et* de morte antecessoris non capiantur nisi in suis comitatibus, et hoc modo: nos, vel si extra regnum fuerimus, capitalis justiciarius noster, mittemus justiciarios per unumquemque comitatum *semel in anno,* qui cum militibus comitatuum capiant in comitatibus assisas predictas. *Et ea que in illo adventu suo in comitatu per justiciarios predictos ad dictas assisas capiendas missos terminari non possunt, per eosdem terminentur alibi in itinere suo; et ea que per eosem propter difficultatem aliquorum articulorum terminari non possunt, referantur ad justiciarios, nostros de banco, et ibi terminentur.*

13. *Assise de ultima presentatione semper capiantur coram justiciariis nostris de banco et ibi terminentur.*

14 (20). Liber homo non amercietur pro parvo delicto nisi secundum modum *ipsius* delicti, et pro magno delicto, secundum magnitudinem delicti, salvo contenemento suo; et mercator eodem modo salva mercandisa sua; et villanus *alterius quam noster* eodem

modo amercietur salvo wainagio suo, si inciderit in misericordiam nostram; et nulla predictarum misericordiarum ponatur nisi per sacramentum proborum *et legalium* hominum de visneto.

(21). Comites et barones non amercientur nisi per pares suos, et non nisi secundum modum delicti.

(22). *Nulla ecclesiastica persona* amercietur *secundum quantitatem beneficii sui ecclesiastici, set secundum laicum tenementum suum, et secundum quantitatem delicti.*

15 (23). Nec villa, nec homo, distringatur facere pontes ad riparias nisi que ex antiquo et de jure facere debet.

16. *Nulla riparia decetero defendatur, nisi ille que fuerunt in defenso tempore regis Henrici avi nostri, per eadem loca et eosdem terminos sicut esse consueverunt tempore suo.*

17 (24). Nullus vicecomes, constabularius, coronatores vel alii ballivi nostri teneant placita corone nostre.

18 (26). Si aliquis tenens de nobis laicum feodum moriatur, et vicecomes vel ballivus noster ostendat litteras nostras patentes de summonitione nostra de debito quod defunctus nobis debuit, liceat vicecomiti vel ballivo nostro attachiare et imbreviare catalla defuncti inventa in laico feodo ad valenciam illius debiti per visum legalium hominum, ita tamen quod nichil inde amoveatur donec persolvatur nobis debitum quod clarum fuerit, et residuum relinquatur executoribus ad faciendum testamentum defuncti; et si nichil nobis debeatur ab ipso, omnia catalla cedant defuncto, salvis uxori ipsius et pueris suis rationabilibus partibus suis.

19 (28). Nullus constabularius vel ejus ballivus capiat blada vel alia catalla alicujus *qui non sit de villa ubi castrum situm est*, nisi statim inde reddat denarios aut respectum inde habere possit de voluntate venditoris; *si autem de villa ipsa fuerit, infra quadraginta dies precium reddat.*

20 (29). Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri, si *ipse eam* facere voluerit in propria persona sua, vel per alium probum hominem, si ipse eam facere non possit propter rationabilem causam, et, si nos duxerimus eum vel miserimus in exercitum, erit quietus de custodia secundum quantitatem temporis quo per nos fuerit in exercitu *de feodo pro quo fecit servicium in exercitu.*

21 (30). Nullus vicecomes, vel ballivus noster, vel alius capiat equos vel carettas alicujus pro cariagio faciendo, nisi *reddat liberationem antiquitus statutam, scilicet pro caretta ad duos equos decem denarios per diem, et pro caretta ad tres equos quatuordecim denarios per diem. Nulla caretta dominica alicujus ecclesiastice persone vel militis vel alicujus domine capiatur per ballivos predictos.*

(31). Nec nos nec ballivi nostri *nec alii* capiemus alienum boscum ad castra vel alia agenda nostra, nisi per voluntatem illius cujus boscus ille fuerit.

22 (32). Nos non tenebimus terras eorum qui convicti fuerint de felonia, nisi per unum annum et unum diem; et tunc reddantur terre dominis feodorum.

23 (33). Omnes kidelli decetero deponantur penitus per Tamisiam et Medeweiam et per totam Angliam, nisi per costeram maris.

24 (34). Breve quod vocatur Precipe decetero non fiat alicui de aliquo tenemento, unde liber homo *perdat* curiam suam.

25 (35). Una mensura vini sit per totum regnum nostrum, et una mensura cervisie, et una mensura bladi, scilicet quarterium London., et una latitudo pannorum tinctorum et russettorum et haubergettorum, scilicet due ulne infra listas; de ponderibus *vero* sit ut de mensuris.

26 (36). Nichil detur de cetero pro brevi inquisitionis *ab eo qui inquisitionem petit* de vita vel membris, set gratis concedatur et non negetur.

27 (37). Si aliquis teneat de nobis per feodifirmam vel soccagium, vel per burgagium, et de alio terram teneat per servicium militare, nos non habebimus custodiam heredis nec terre sue que est de feodo alterius, occasione illius feodifirme, vel soccagii, vel burgagii, nec habebimus custodiam illius feodifirme vel soccagii vel burgagii, nisi ipsa feodifirma debeat servicium militare. Nos non habebimus custodiam heredis *nec* terre alicujus quam tenet de alio per servicium militare, occasione alicujus parve serjanterie quam tenet de nobis per servicium reddendi nobis cultellos, vel sagittas, vel hujusmodi.

28 (38). Nullus ballivus ponat decetero aliquem ad legem *manifestam vel ad juramentum* simplici loquela sua, sine testibus fidelibus ad hoc inductis.

29 (39). Nullus liber homo *decetero* capiatur vel imprisonetur aut disseisiatur *de aliquo libero tenemento suo vel libertatibus vel liberis consuetudinibus suis,* aut utlagetur, aut exuletur aut aliquo *alio* modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terre.

(40). Nulli vendemus, nulli negabimus aut differemus rectum vel justiciam.

30 (41). Omnes mercatores, *nisi publice antea prohibiti fuerint,* habeant salvum et securum exire de Anglia, et venire in Angliam, et morari, et ire per Angliam tam per terram quam per aquam ad emendum *vel* vendendum sine omnibus toltis malis per antiquas et rectas consuetudines, preterquam in tempore gwerre, et si sint de terra contra nos gwerrina; et si tales inveniantur in terra nostra in principio gwerre, attachientur sine dampno corporum vel rerum, donec sciatur a nobis vel *a* capitali justiciario nostro quomodo mercatores terre nostre tractentur, qui tunc invenientur in terra contra nos gwerrina; et, si nostri salvi sint ibi, alii salvi sint in terra nostra.

31 (43). Si quis tenuerit de aliqua escaeta, sicut de honore Wallingefordie, Bolonie, Notingeham, Lancastrie, vel de aliis que sunt in manu nostra, et sint baronie, et obierit, heres ejus non det aliud relevium nec fiat nobis aliud servicium quam faceret baroni, si *ipsa* esset in manu baronis; et nos eodem modo eam tenebimus quo baro eam tenuit, *nec nos, occasione talis baronie vel escaete, habebimus aliquam escaetam vel custodiam aliquorum hominum nostrorum, nisi alibi tenuerit de nobis in capite ille qui tenuit baroniam vel escaetam.*

32. *Nullus liber homo decetero det amplius alicui vel vendat de terra sua quam ut de residuo terre suc possit sufficienter fieri domino feodi servicium ei debitum quod pertinet ad feodum illud.*

33 (46). Omnes *patroni abbatiarum* qui habent cartas regum Anglie *de advocatione,* vel antiquam tenuram *vel possessionem,* habeant earum custodiam cum vacaverint, sicut habere debent, *et sicut supra declaratum est.*

34 (54). Nullus capiatur vel imprisonetur propter appellum femine de morte alterius quam viri sui.

35. *Nullus comitatus decetero teneatur, nisi de mense in mensem; et, ubi major terminus esse solebat, major sit. Nec aliquis vicecomes vel ballivus faciat turnum suum per hundredum nisi bis in anno et non nisi in loco debito et consueto, videlicet semel post Pascha et iterum post festum sancti Michaelis. Et visus de franco plegio tunc fiat ad illum terminum sancti Michalis sine occasione, ita scilicet quod quilibet habeat libertates suas quas habuit et habere consuevit tempore regis Henrici avi nostri, vel quas postea perquisivit. Fiat autem visus de franco plegio sic, videlicet quod pax nostra teneatur, et quod tethinga integra sit sicut esse consuevit, et quod vicecomes non querat occasiones, et quod contentus sit eo quod vicecomes habere consuevit de visu suo faciendo tempore regis Henrici avi nostri.*

36. *Non liceat alicui decetero dare terram suam alicui domui religiose, ita quod eam resumat tenendam de eadem domo, nec liceat alicui domui religiose terram alicujus sic*

accipere quod tradat illam ei a quo ipsam recepit tenendam. Si quis autem de cetero terram suam alicui domui religiose sic dederit, et super hoc convincatur, donum suum penitus cassetur, et terra illa domino suo illius feodi incurratur.

37. *Scutagium decetero capiatur sicut capi solebat tempore regis Henrici avi nostri. Et salve sint archiepiscopis, episcopis, abbatibus, prioribus, templariis, hospitalariis, comitibus, baronibus et omnibus aliis tam ecclesiasticis quam secularibus personis libertates et libere consuetudines quas prius habuerunt.*

(60). Omnes autem istas consuetudines predictas et libertates quas concessimus in regno nostro tenendas quantum ad nos pertinet erga nostros, omnes de regno nostro tam clerici quam laici observent quantum ad se pertinet erga suos. *Pro hac autem concessione et donatione libertatum istarum et aliarum libertatum contentarum in carta nostra de libertatibus foreste, archiepiscopi, episcopi, abbates, priores, comites, barones, milites, libere tenentes, et omnes de regno nostro dederunt nobis quintam decimam partem omnium mobilium suorum. Concessimus etiam eisdem pro nobis et heredibus nostris quod nec nos nec heredes nostri aliquid perquiremus per quod libertates in hac carta contente infringantur vel infirmentur; et, si de aliquo aliquid contra hoc perquisitum fuerit, nichil valeat et pro nullo habeatur.*

His testibus domino Stephano Cantuariensi archiepiscopo, Eustachio Lundoniensi, Jocelino Bathoniensi, Petro Wintoniensi, Hugoni Lincolniensi, Ricardo Sarrisberiensi, Benedicto Roffensi, Willelmo Wigorniensi, Johanne Eliensi, Hugone Herefordiensi, Radulpho Cicestriensi, Willelmo Exoniensi episcopis, abbate sancti Albani, abbate sancti Edmundi, abbate de Bello, abbate sancti Augustini Cantuariensis, abbate de Eveshamia, abbate de Westmonasterio, abbate de Burgo sancti Petri, abbate Radingensi, abbate Abbendoniensi, abbate de Maumeburia, abbate de Winchecomba, abbate de Hida, abbate de Certeseia, abbate de Sireburnia, abbate de Cerne, abbate de Abbotebiria, abbate de Middletonia, abbate de Seleby, abbate de Wyteby, abbate de Cirencestria, Huberto de Burgo justiciario, Ranulfo comite Cestrie et Lincolnie, Willelmo comite Sarrisberie, Willelmo comite Warennie, Gilberto de Clara comite Gloucestrie et Hertfordie, Willelmo de Ferrariis comite Derbeie, Willelmo de Mandevilla comite Essexie, Hugone Le Bigod comite Norfolcie, Willelmo comite Aubemarle, Hunfrido comite Herefordie, Johanne constabulario Cestrie, Roberto de Ros, Roberto filio Walteri, Roberto de Veteri ponte, Willielmo Brigwerre, Ricardo de Munfichet, Petro filio Herberti, Matheo filio Herberti, Willielmo de Albiniaco, Roberto Gresley, Reginaldo de Brahus, Johanne de Munemutha, Johanne filio Alani, Hugone de Mortuomari, Waltero de Bellocampo, Willielmo de sancto Johanne, Petro de Malalacu, Briano de Insula, Thoma de Muletonia, Ricardo de Argentein., Gaufrido de Nevilla, Willielmo Mauduit, Johanne de Baalun.

Datum apud Westmonasterium undecimo die februarii anno regni nostri nono.

APPENDIX B

THE FOREST CHARTER[1]

(November 6, 1217)

Henricus Dei gratia rex Anglie, dominus Hibernie, dux Normannie, Aquitanie et comes Andegavie, archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, justiciariis, forestariis, vicecomitibus, prepositis, ministris, et omnibus ballivis et fidelibus suis, salutem. Sciatis quod, intuitu Dei et pro salute anime nostre et animarum antecessorum et successorum nostrorum, ad exaltacionem Sancte Ecclesie et emendacionem regni nostri, concessimus et hac presenti carta confirmavimus pro nobis et heredibus nostris in perpetuum, de consilio venerabilis patris nostri domini Gualonis tituli sancti Martini presbiteri cardinalis et apostolice sedis legati, domini Walteri Eboracensis archiepiscopi, Willelmi Londoniensis episcopi, et aliorum episcoporum Anglie, et Willelmi Marescalli comitis Penbrocie, rectoris nostri et regni nostri, et aliorum fidelium comitum et baronum nostrorum Anglie, has libertates subscriptas tenendas in regno nostro Anglie, in perpetuum:

1. In primis omnes foreste quas Henricus rex avus noster afforestavit videantur per bonos et legales homines; et, si boscum aliquem alium quam suum dominicum afforestaverit ad dampnum illius cujus boscus fuerit, deafforestentur. Et si boscum suum proprium afforestaverit, remaneat foresta, salva communa de herbagio et aliis in eadem foresta, illis qui eam prius habere consueverunt.

2. Homines qui manent extra forestam non veniant decetero coram justiciariis nostris de foresta per communes summoniciones, nisi sint in placito, vel plegii alicujus vel aliquorum qui attachiati sunt propter forestam.

3. Omnes autem bosci qui fuerunt afforestati per regem Ricardum avunculum nostrum, vel per regem Johannem patrem nostrum usque ad primam coronacionem nostram, statim deafforestentur, nisi fuerit dominicus boscus noster.

4. Archiepiscopi, episcopi, abbates, priores, comites et barones et milites et libere tenentes, qui boscos suos habent in forestis, habeant boscos suos sicut eos habuerunt tempore prime coronacionis predicti regis Henrici avi nostri, ita quod quieti sint in perpetuum de omnibus purpresturis, vastis et assartis factis in illis boscis, post illud tempus usque ad principium secundi anni coronacionis nostre. Et qui de cetero vastum, purpresturam, vel assartum sine licencia nostra in illis fecerint, de vastis et assartis respondeant.

5. Reguardores nostri eant per forestas ad faciendum reguardum sicut fieri consuevit tempore prime coronacionis predicti regis Henrici avi nostri, et non aliter.

6. Inquisicio, vel visus de expeditacione canum existencium in foresta, decetero fiat quando debet fieri reguardum, scilicet de tercio anno in tercium annum; et tunc fiat per visum et testimonium legalium hominum et non aliter. Et ille, cujus canis inventus fuerit tunc non expeditatus, det pro misericordia tres solidos; et de cetero nullus bos capiatur pro expeditacione. Talis autem sit expeditacio per assisam communiter quod tres ortilli abscidantur sine pelota de pede anteriori; nec expeditentur canes de cetero, nisi in locis ubi consueverunt expeditari tempore prime coronacionis regis Henrici avi nostri.

[1] Text as given in McKechnie, *op. cit.*, pp. 508-12, taken from *Statutes of the Realm* 1:20-21. For slight variations in 1225 text, see Bémont, *op. cit.*, 64 ff.

7. Nullus forestarius vel bedellus decetero faciat scotale, vel colligat garbas, vel avenam, vel bladum aliud, vel agnos, vel porcellos, nec aliquam collectam faciant; et per visum et sacramentum duodecim reguardorum quando facient reguardum, tot forestarii ponantur ad forestas custodiendas, quot ad illas custodiendas rationabiliter viderint sufficere.

8. Nullum suanimotum de cetero teneatur in regno nostro nisi ter in anno; videlicet in principio quindecim dierum ante festum Sancti Michaelis, quando agistatores conveniunt ad agistandum dominicos boscos nostros; et circa festum Sancti Martini quando agistatores nostri debent recipere pannagium nostrum; et ad ista duo suanimota conveniant forestarii, viridarii, et agistatores, et nullus alius per districtionem; et tercium suanimotum teneatur in inicio quindecim dierum ante festum Sancti Johannis Baptiste, pro feonacione bestiarum nostrarum; et ad istud suanimotum tenendum convenient forestarii et viridarii et nulli alii per districtionem. Et preterea singulis quadraginta diebus per totum annum conveniant viridarii et forestarii ad videndum attachiamenta de foresta, tam de viridi, quam de venacione, per presentacionem ipsorum forestariorum, et coram ipsis attachiatis. Predicta autem suanimota non teneantur nisi in comitatibus in quibus teneri consueverunt.

9. Unusquisque liber homo agistet boscum suum in foresta pro voluntate sua et habeat pannagium suum. Concedimus eciam quod unusquisque liber homo possit ducere porcos suos per dominicum boscum nostrum, libere et sine impedimento, ad agistandum eos in boscis suis propriis, vel alibi ubi voluerit. Et si porci alicujus liberi hominis una nocte pernoctaverint in foresta nostra, non inde occasionetur ita quod aliquid de suo perdat.

10. Nullus de cetero amittat vitam vel membra pro venacione nostra; set si aliquis captus fuerit et convictus de capcione venacionis, graviter redimatur, si habeat unde redimi possit; et si non habeat unde redimi possit, jaceat in prisona nostra per unam annum et unum diem; et, si post unum annum et unum diem plegios invenire possit, exeat a prisona; sin autem, abjuret regnum Anglie.

11. Quicunque archiepiscopus, episcopus, comes vel baro transierit per forestam nostram, liceat ei capere unam vel duas bestias per visum forestarii, si presens fuerit; sin autem, faciat cornari, ne videatur furtive hoc facere.

12. Unusquisque liber homo decetero sine occasione faciat in bosco suo, vel in terra sua quam habeat in foresta, molendinum, vivarium, stagnum, marleram, fossatum, vel terram arabilem extra cooperatum in terra arabili, ita quod non sit ad nocumentum alicujus vicini.

13. Unusquisque liber homo habeat in boscis suis aereas, ancipitrum et spervariorum et falconum, aquilarum, et de heyrinis et habeat similiter mel quod inventum fuerit in boscis suis.

14. Nullus forestarius de cetero, qui non sit forestarius de feudo reddens nobis firmam pro balliva sua, capiat chiminagium aliquod in balliva sua; forestarius autem de feudo firmam nobis reddens pro balliva sua capiat chiminagium, videlicet pro careta per dimidium annum duos denarios, et pro equo qui portat sumagium per dimidium annum unum obolum, et per alium dimidium annum obolum, et non nisi de illis qui de extra ballivam suam, tanquam mercatores, veniunt per licenciam suam in ballivam suam ad buscam, meremium, corticem vel carbonem emendum, et alias ducendum ad vendendum ubi voluerint; et de nulla alia careta vel sumagio aliquod chiminagium capiatur: et non capiatur chiminagium nisi in locis illis ubi antiquitus capi solebat et debuit. Illi autem qui portant super dorsum suum buscam, corticem, vel carbonem, ad vendendum, quamvis inde vivant, nullum de cetero dent chiminagium. De boscis autem aliorum nullum detur chiminagium foristariis nostris, preterquam de dominicis boscis nostris.

15. Omnes utlagati pro foresta tantum a tempore regis Henrici avi nostri usque ad primam coronacionem nostram, veniant ad pacem nostram sine impedimento, et salvos plegios inveniant quod de cetero non forisfaciant nobis de foresta nostra.

16. Nullus castellanus vel alius teneat placita de foresta sive viridi sive de venacione, sed quilibet forestarius de feudo attachiet placita de foresta tam de viridi quam de venacione, et ea presentet viridariis provinciarum et cum irrotulata fuerint et sub sigillis viridarioum inclusa, presententur capitali forestario cum in partes illas venerit ad tenendum placita foreste, et coram eo terminentur.

17. Has autem libertates de forestis concessimus omnibus, salvis archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, militibus et aliis tam personis ecclesiasticis quam secularibus, Templariis et Hospitalariis, libertatibus et liberis consuetudinibus in forestis et extra, in warennis et aliis, quas prius habuerunt. Omnes autem istas consuetudines predictas et libertates, quas concessimus in regno nostro tenendas quantum ad nos pertinet erga nostros, omnes de regno nostro tam clerici quam laici observent quantum ad se pertinet erga suos. Quia vero sigillum nondum habuimus, presentem cartam sigillis venerabilis patris nostri domini Gualonis tituli Sancti Martini presbiteri cardinalis, apostolice sedis legati, et Willelmi Marescalli comitis Penbrok, rectoris nostri et regni nostri, fecimus sigillari. Testibus prenominatis et aliis multis. Datum per manus predictorum domini legati et Willelmi Marescalli apud Sanctum Paulum London., sexto die Novembris, anno regni nostri secundo.

APPENDIX C

CHRONOLOGICAL LIST OF REISSUES, CONFIRMATIONS, AND SENTENCES OF EXCOMMUNICATION AGAINST VIOLATORS OF THE CHARTERS

(This list does not include informal promises of observance made by the king from time to time, such as are noted by Matthew Paris, especially between the years 1244 and 1258; as to sentences of excommunication, it is undoubtedly incomplete.)

1215, 15-19 June	Original grant of Magna Carta.
1216, 12 November	First revision of the Charter issued.
1217, 6 February	The Charter, slightly modified, sent to Ireland.
1217, 12 September	The "liberties" recognized in the Treaty of Lambeth.
1217, 6 November	Second revision, with separate Forest Charter, issued.
1225, 11 February	Third and final revision, with Forest Charter, issued.
	Sentence of excommunication against violators of the Charters pronounced by Stephen Langton and bishops.
1237, 28 January	*Parva carta,* confirming Magna Carta and Forest Charter issued; sentence of excommunication against violators pronounced by Archbishop Edmund.
1253	Confirmation of both Charters.
	Formal sentence of excommunication against violators pronounced by Archbishop Boniface and bishops.
1254	This sentence confirmed by Innocent IV and published throughout England.
1255	Confirmation and sentence of excommunication repeated.
1256	Sentence of excommunication pronounced by Boniface. (?)[1]
1257	Sentence of excommunication confirmed by bull of Alexander IV.
1258	The Great Charter confirmed in the Provisions of Oxford.
1264	Confirmation of both Charters by Simon de Montfort.
1265, 14 March	Confirmation of both Charters by Henry III and Prince Edward.
1266	Confirmation of both Charters, Dictum of Kenilworth.
1267	This provision of 1266 embodied in the Statute of Marlborough, c. v.
1270	Sentence of excommunication against violators pronounced 1253, repeated at St. Paul's by nine bishops.[2]
	(Orders for repeating the sentence at stated intervals in the archdeaconry of Worcester.)
1276, May	Confirmation of both Charters.[3]
(1279	Canons of Reading provide for observance of the Charters, and repetition of sentence of excommunication against violators.)
(1281	Canons of Lambeth provide for repetition of sentence of excommunication against violators.)
1297, 10 October	Confirmatio Cartarum; sentence of excommunication.
1297, 4 November	This confirmation attested by the king in Flanders.
1300, 6 March	Articuli super cartas.
	Sentence of excommunication pronounced by Winchelsea and bishops.
1301, 14 February	Confirmation of the Charters as result of the Lincoln Parliament.

[1] A separate occasion, or a reference to 1255 sentence? Noted only in *Ann. Lond.*, p. 49.

[2] *Ann. Lond.*, pp. 80-81; *Chronica Maiorum*, pp. 122-23.

[3] *Ann. Worcester*, p. 469; *Ann. Waverley*, p. 386, (*Ann. Winchester*, p. 120).

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